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THE CASUIST

A Collection of Cases in Moral and Pastoral Theology

New Edition revised in accordance with the Code of Canon Law

BY

REV. STANISLAUS WOYWOD, O.F.M.

Volume III

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PREFACE

THE present new edition of THE CASUIST will be found to conform in all points to the new Canon Law. A few cases that appeared in previous editions of this work and dealt extensively with conditions that were changed by the new law, have been dropped and new and timely cases have been substituted for them.

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THE CASUIST

New Casus Conscientiae of General Import, Discussed and Solved

Vol. III

I. SOME POINTS REGARDING THE NEW MARRIAGE LEGISLATION

Rev. and Dear Sir.—Will you kindly give me some information on a few points concerning the new marriage legislation, *Ne temere,* August 2, 1907, and the Code of Canon Law.

1. I have heard it maintained that in the Archdiocese of New York any pastor or his assistants may marry *validly* any place within the limits of the diocese, although they marry *licitly* only within the limits of their own parish. Do you know if this is the case?

2. Is it not sufficient for *vera sponsalia,* under the new legislation, that the written document or betrothal be signed by both parties in the presence of the ordinary or the parish priest, though the parties to the contract do not sign in the presence of one another? This is all that is required for other contracts in writing, and it would seem to be sufficient for a betrothal.

3. Do Catholics who, under the new marriage legislation, contract or attempt to contract marriage before a non-Catholic minister of religion, incur excommunication as formerly? The reason I ask is

that since the excommunication was intended to deter Catholics from approaching a non-Catholic minister of worship, and that now a greater penalty being provided to deter them from such a ceremony, namely the invalidity of such unions, it seems to me that the lesser penalty, *i. e.*, the excommunication, serving little or no purpose at present, would become inoperative. For if the nullity of their marriage, when contracted before a non-Catholic minister of the Gospel, will not deter Catholics from such a ceremony, certainly dread of the excommunication incurred by such conduct will have no influence with them.

Answer.—1. It is evidently incorrect to say that a priest, having faculties in the diocese where he resides, may marry *validly* any place within the limits of the diocese to which he belongs. The text of the decree *Ne temere,* of the Congregation of the Council, August 2, 1907, states explicitly that *"the parish priest and the ordinary of the place assist* VALIDLY *at a marriage only within the limits of their territory; within which they assist validly at marriages not only of their own subjects but also of those not subject to them"* ("Ne temere," IV, 11). Canon 1095 has the same rule.

Now while the territory of the ordinary is the whole diocese, and he assists validly at the marriages within the limits of the diocese, the territory of the pastor is his parish, and therefore only within the limits of his *parish* does he assist *validly* at marriages. As regards the Archdiocese of New York, and the same will hold good for the other dioceses of the United States, it is expressly stated in the letter of the Archbishop, March 2, 1908, to all the priests of the archdiocese, on this matter that "as far as this diocese is affected in the matter of *validity,* every priest of this diocese, having faculties, can validly assist at marriages, *within the limits of his own parish,* and can marry *validly, within the limits of his own parish,* not only his

own parishioners, but also people from other parishes and other dioceses, provided there be no diriment impediment. A marriage performed by a priest (without being duly delegated) outside the limits of his own parish is null and void" (cf. Letter of Archbp. Farley, March 2, 1908, p. 6). As far as it has been possible to consult the pastoral letters of the other Bishops of the United States on this new legislation, they all lay down the same rules for the guidance of their clergy, namely, that *within the limits of their respective parishes,* the pastors assist validly at all marriages, but *outside the limits of their parishes they can not assist* VALIDLY, unless delegated by the ordinary or by the parish priest of the district where the marriage takes place. Whatever may be said concerning the intention of the ordinaries of dioceses to extend the jurisdiction of parish priests in the matter of marriages to the whole diocese, it is evident from the printed letter of the Archbishop of New York that such is not his intention. In any case it would require very exceptional circumstances to justify a Bishop in extending the jurisdiction of his priests in the matter of marriages to the whole diocese, since it is the intention of the Congregation of the Council, by whose authority the new legislation was enacted, to limit the parish priest's jurisdiction over marriage to the limits of his own parish. This appears from a casual perusal of the text of the decree *Ne temere* itself, or of the commentaries on it issued by the canonists here and abroad.

2. As regards the manner of signing the written *sponsalia,* the Congregation of the Council has recently issued instructions that the written agreement must be signed by both parties to it and by the parish priest, or the ordinary of the diocese, or in the absence of the parish priest or of the ordinary, then by two witnesses, in the presence of all the parties required by the new law to sign it. It

is not necessary that the document be drawn up in the presence of the parties signing it, but it is necessary for its *validity* that it be signed by the contracting parties in the presence of one another and of the parish priest or the ordinary of the diocese, who shall also sign it, then and there, in the presence of the contracting parties. It would not suffice, for instance, if the man signed it in the presence of his parish priest, and then sent it to the woman to be signed by her, together with the parish priest, in the presence of one another. The written document must be signed by both parties to it in the presence of one another and in the presence of the parish priest, who shall then sign it in the presence of the two contracting parties. It is of paramount importance that these formalities be observed, otherwise the document will be null and void. It is also required by the new legislation that the document contain the date on which it was signed, that is to say the day, the month and the year. If such date is omitted, the omission will invalidate the *sponsalia.* As all this is positive legislation, one may not conclude that because certain formalities are not required for contracts in general, therefore they are not required for the validity of a very special contract like *sponsalia.* In this respect *sponsalia* or the written agreement to marry resembles a last will and testament, in the way it must be signed, in order to be valid.

The law in most of the States requires that a last will and testament, in order to be valid, must be signed by the testator *in the presence* of two witnesses, who shall then sign it also, in the presence of one another and of the testator. It must also bear the date of the day, month and year. If these formalities are not observed, the testament will not stand in court. The same is true of the written betrothal or *sponsalia.* Every one required by the new law to sign the *sponsalia* must sign in the presence of every one else so signing.

The purpose of the law is to prevent fraud and deception as well as misunderstandings and legal complications.

3. Do Catholics still incur excommunication who are married by a non-Catholic minister of religion?

Yes, Catholics so marrying incur excommunication. Canon 2319, sec. 1, no. 1, states: Those who contract marriage before a non-Catholic minister in violation of the law of Canon 1063, sec. 1, are punished *ipso facto* with excommunication reserved to the Ordinary. The Code does not say that those who contract marriage before a non-Catholic minister are excommunicated, but it specifies the act that is subject to excommunication by saying, those who contract marriage before a non-Catholic minister in violation of the law of Canon 1063, sec. 1. That Canon speaks of mixed marriages where the couple goes through the marriage ceremony both before the Catholic priest and the non-Catholic minister; it is immaterial who comes first. There are many commentators of the Code who pay no attention to the phrase of Canon 2319 "contra praescriptum Canonis 1063," and merely assert that a Catholic who contracts marriage before a non-Catholic minister, as minister of religion, incurs the excommunication. That was true in the former law, but we believe the Code has modified the law.

The rule of strict interpretation in penalties forbids one to go beyond what is necessarily contained in the wording of the penalty. The fact that one crime is as bad as the other or even worse, does not entitle one to extend the penalty to a case not plainly comprehended in the law. It seems that Canons 2319 and 1063, taken together, punish only the double ceremony with excommunication. The reason why the double ceremony should be punished and the one before the non-Catholic minister only should not be punished is not indicated in the Code, but as said above, in the matter of

penalties the reason that one offence is the same as another, or worse, does not enter into an interpretation of the penal law.

The fact that the faculty granted by the Holy See to our bishops to dispense from the impediment of mixed religion does say that the party should be absolved from the excommunication, if marriage had been attempted by them before a non-Catholic minister, is undoubtedly an objection to the interpretation here given of Canon 2319. Nevertheless, there have been other faculties which contained directions which were not required by law. In any case, it is certain that the former excommunication for marriage before a non-Catholic minister was inflicted because of the forbidden "communicatio in sacris cum haereticis," and under that head the parties were excommunicated. Now, the Code abolishes the excommunication for the "communicatio in sacris," for Canon 2316 which speaks of this offence attaches as the only penalty the "suspicio de haeresi," that is to say, one becomes in law suspected of heresy.

The question whether the excommunication of the Third Council of Baltimore is still in force against Catholics who attempt marriage before a non-Catholic minister, should be answered in the negative. The reason is that at the time when the Council of Baltimore passed that law, it was not certain that the general law of the Church covered the case with the censure of excommunication. In a decree of May 11, 1892 (Collectanea de Prop. Fide, no. 1793), the Holy Office stated that those who contract marriage before a non-Catholic minister are excommunicated under the general law of the Church. Since then the Council of Baltimore ceased to be a particular law for the United States, having been superseded by the general law of the Church.

II. SOME PHASES OF DELEGATION IN MARRIAGE CASES.

Case I. A parish priest, Peter, whose parish has recently been divided, has difficulty in making foreigners formerly subject to him understand that they are no longer his subjects. The difficulty is aggravated by Peter's residence in the county seat; armed with marriage licenses, many couples from the neighboring parish come to Peter and beg him to become the *testis qualificatus* of their marriage. One such couple comes on a Monday, exhibits the license and asks that the ceremony should be performed on the following Thursday. Peter refuses to have anything to do with them, bidding them go to their own pastor, of whom they have now heard for the first time. James, a diocesan official living with Peter, but having neither parochial duties nor parochial privileges, takes it upon himself to determine the *status liber* of the couple, and then 'phones the whole story to John, the *parochus proprius.* John agrees to procure the dispensation from the banns and to marry the couple on Thursday in his own parish. On the day appointed, an hour after the time set for their appearance before their own parish priest, the couple and witnesses arrive at Peter's rectory and state that they have tried to reach John's rectory by motor, that they could not get within four miles of it because of flooded roads, and that if they cannot be married before a Catholic priest at once, they will go to the nearest minister. In Peter's absence, James presides at the marriage, discovering to his relief, before recording the marriage, that Peter had met the couple on the road to the rectory and had said, "Go to the rectory and tell the priest you'll find there to marry you." For safety's sake, he asks them to renew their consent, records the marriage, and sends a copy of the records and the fee to the *parochus proprius,* John.

Questions: (1) Did James assist validly?
(2) Did he assist licitly?
(3) Is James's course of action to be commended?

Solution. (1) *James assisted validly at the marriage* as Peter's delegate, the valid assistance beginning at the moment he knew of and accepted Peter's delegation.

The second part of Canon 1095 of the Code states definitely that "the pastor and the ordinary of the diocese, who can validly assist at marriages, may also grant permission to another priest to assist validly within the limits of their respective districts." Furthermore, the same Canon, 1, 2 states that the pastor and the ordinary within the limits of their own territory "validly assist at the marriages not only of their subjects but also of non-subjects." Therefore the parish priest Peter can validly delegate James to assist validly at the marriage of non-subjects while they are in Peter's district. Such valid delegation he gave, not in the more approved fashion by script or viva voce, but through the *sponsus* as *internuntius.* However, according to the statement of the case, by a mere accident the delegation became valid.

Vlaming (*Prælectiones iuris matrimonii,* II, 572-574) in his explanation of the Code gives a clear exposition of the requirements for valid delegation. Briefly, delegation to be valid must satisfy requirements (a) *ex parte delegantis,* (b) *ex parte delegati,* (c) *ex parte delegationis. Ex parte delegantis:* delegation *"in re matrimoniali"* to be valid, must be granted by a positive act of the will by one who has the right to assist; *ex parte delegati:* to be valid, delegation must be made to a *"sacerdos determinatus, conscius, acceptans"; ex parte delegationis:* to be valid, delegation must be *quoad obiectum* for a determinate marriage, and *quoad formam* expressly given, either viva voce, in writing or in some positive form.

In James's case, the delegation satisfied all the requirements except

those of James's own knowledge and acceptance of such delegation, requirements as essential for validly assisting as a delegated *testis qualificatus* at marriage as sorrow for sin is for a valid absolution! Clearly, before discovering that Peter really had delegated him through the *sponsus* to act as *testis qualificatus,* James did not look upon himself as acting for Peter. He was acting either on his own authority or on the presumed delegation of John, with whom he had talked at such great length over the 'phone. In either alternative, theological opinion would be in favor of the invalidity of the marriage *ob defectum formæ;* James cannot act on his own authority, for he has no authority in parochial matters, therefore none in marriage cases; "presumed delegation is not admissible," and James is crassly ignorant of Canon Law and Moral Theology, if he presumes to act on John's delegation,—for no parish priest may delegate valid assistance at the marriage of his subjects when they are outside his territory. However, some theologians would pronounce the marriage valid, no matter on what grounds James took it upon himself to preside, because he really had Peter's permission, although he did not know it; and they might base their interpretation on Canon 37 of the Code. Sabetti says: *"Alii tamen affirmant concessionem valere statim ac facta est, quia est concessio gratiosa"* (911, q. 8). James showed common sense, at least, when, after discovering that he had Peter's permission, he demanded a renewal of consent; for thereby he showed that he accepted Peter's delegation and had begun to realize that without it he might have had a case of revalidation on his hands.

(2) *James assisted at the marriage licitly.*

The conditions for licit assistance at marriage that apply to our case are, according to Canon 1097 of the Code: (a) certainty of the *status liber* of the contracting parties, and publication of or dispensation from the banns; (b) ascertained permission of the *paro-*

chus proprius, unless a weighty reason excuses from demanding such permission; (c) return of fee to the *parochus* of the bride.

In the case under discussion, the *status liber* of the contracting parties is known, and dispensation from the banns has been procured. Furthermore, there is reason enough to excuse from demanding permission from the *parochus propius.* Augustine (V, p. 291) gives as grave reasons excusing from asking the permission of the *parochus proprius,* "probable fear of a civil ceremony," "refusal of the parties' own pastor to marry them" for one reason or another, "travelling expenses," "accidental presence of parents or friends." Augustine quotes Wernz as advising the pastor or Ordinary, presuming to marry without permission of the *parochus propius,* of the prudence of keeping documentary proof of his reasons for action. In the case under discussion, Peter was justified in delegating James, without consulting John, for the contracting parties had made every effort to reach John and there was more than a probable fear of a ceremony not before a priest; for in desperation the couple had stated that if they could not get married before a Catholic priest at once, they would go elsewhere. Finally, the fee was sent to the *parochus proprius.* James, then, after learning of and accepting Peter's delegation, assisted at the marriage not only validly but licitly.

(3) *James's course of action is not to be commended.*

In the first place, James is a diocesan official whose duties are well-defined and to those duties he should confine himself.

In the second place, his course of action is based on rather lamentable ignorance of the first principles of Canon Law and Moral Theology.

Finally, since he did undertake the management of this marriage case, when he was not certain of Peter's delegation, when he should have known that he could not act on his own authority, and when

he must have known that John could not delegate him, he should have telephoned either the bishop or the vicar-general, and one or the other would gladly have made him a valid and licit delegate.

Case II. What is to be done in a case like the following: The pastor sends me to some out of town place for Sunday work. The pastor of that place is taking his vacation. I say two Masses, baptize a child, and after dinner I start out for home, when I am notified that there is a marriage at two o'clock. The parties to be married are in fact in the church waiting for the ceremony. It is a case of a Catholic marriage. I knew nothing about the marriage and was not designated to marry them and I could not get word to or from the pastor because I did not know where he was. What could I do in such a case? PERPLEXUS.

Answer: If the pastor who went away on his vacation requested and appointed the neighboring pastor to take care of the parish during his absence and had obtained the approval of the bishop for such arrangement, the neighboring pastor had all the rights of a pastor over the parish of the pastor who had leave of absence. The neighboring pastor had the power to delegate one of his assistants to any of the parochial functions in the parish of the pastor who was on his vacation. He certainly could delegate the assistant to witness marriages in that parish. The difficulty, however, in the present case arises from the fact that the pastor sent the assistant to take care of the parish on that Sunday without explicitly mentioning that the assistant was to witness the marriage. The delegation to witness marriages must be given to a specified priest for a specified marriage or marriages. If the neighboring pastor knew that the marriage was to take place and he sent the assistant to take care of all the parish business on that Sunday, one may still hold that in the orders to the assistant to attend to the parochial affairs of that parish the delegation to assist at the marriage in question

was implicitly contained. If the neighboring pastor did not know that the marriage was to take place, it is impossible to construe the orders of the pastor to his assistant as an implied delegation to assist at the marriage. If the assistant did not know whether his pastor knew of the marriage, he should have gotten into touch with his pastor so as to inform him of the fact and get the delegation. The delegation as demanded by Canon 1096 is necessary for the valid assistance at the marriage in question.

As to priests who at times take the place of the pastor in the care of souls and the administration of the affairs of the parish, there is a declaration of the Committee for the Authentic Interpretation of the Code, May 20, 1923, which states the following: First, that the *vicarius œconomus* of Canons 472 and 473 can give permission to another specified priest to assist at marriage. This vicar is an administrator of the parish during the vacancy of a parish. He is in every sense a pastor for the time being with all the rights and duties of a pastor.

Second, the *vicarius substitutus,* mentioned in Canon 465, sec. 4, can delegate another priest to assist at marriage. This vicar takes the place of the pastor whenever the pastor is absent from his parish for more than a week. The pastor who wishes to go away for more than a week must get the bishop's permission and must appoint a priest to take his place, and that substitute must be approved by the bishop. After the approval by the bishop the substitute pastor has the rights of a pastor in the parish during the pastor's absence, unless the Ordinary limits his rights. A former declaration of the Committee, July 14, 1922 (*Acta Ap. Sedis,* vol. XIV, p. 528) rules that the priest substituting in the absence of the pastor may assist at marriages after his appointment by the pastor has been approved of by the bishop, not before that approval.

Third, the *vicarius substitutus* of a religious pastor has the same rights as the *vicarius substitutus* during the absence of the pastor.

The religious pastor is under the same obligation as the secular pastor in regard to getting permission to leave the parish for over a week and to appointing a substitute to be approved by the bishop. He needs, besides, as Canon 465, sec. 4 declares, the permission of his superior to go away and the substitute must be acceptable to both the bishop and the religious superior, but only the approval of the bishop is essential for the substitute to obtain validly full parochial jurisdiction, so that he may be able to assist at marriages in the parish and delegate other priests (cf. Committee, July 14, 1922; *Acta Ap. Sedis,* vol. XIV, page 528).

Fourth, the *vicarius substitutus* of Canon 465, sec. 5, can assist at marriages and delegate other priests as long as the bishop who was notified of the appointment of the substitute by the pastor has not ruled otherwise. This substitute is the one who is appointed by a pastor who has to go away from his parish hurriedly, for some sudden and grave reason which will keep the pastor away for more than a week. He may leave without first asking the bishop's permission and proposing the substitute for his approval. He must, however, appoint a substitute and inform the bishop as soon as possible of the reason why he went away and whom he appointed as his substitute.

Fifth, the Holy See was asked whether the priest who in Canon 475, sec. 1 is called the *vicarius adjutor,* a priest who is appointed by the bishop to assist a pastor who on account of old age, defect of mind, want of experience, blindness, or any other permanent cause is disabled to govern the parish, has the right to assist at marriage. The Committee answers that section 2 of Canon 475 contains the solution of the question. That section states that the *vicarius adjutor,* if he takes the place of the pastor in all things concerning the management of the parish, has all the rights and duties of a pastor, except the obligation of saying Mass for the people. If, however, he takes the pastor's place only partly, his rights and duties must be learned from the bishop's letter of appointment.

III. IS IT LAWFUL TO ASSIST AT SPIRITISTIC SÉANCES?

Peter, a man of excellent character, though somewhat ingenuous, has been present several times at private spiritistic *séances*. He was led by curiosity alone. He took no active part in the experiments, nor did he sit in the "circle." He was a passive spectator only. For this, however, he was severely taken to task by some friends, who maintained that even passive assistance at spiritistic manifestations is sinful, because it is a communing with evil spirits. Peter, however, maintains that the nature of these spirit manifestations is not known, and, therefore, can not be condemned as unlawful or evil, and he does not see why he may not continue to assist at them.

Answer.—I. Briefly, the phenomena of spiritism may be summed up as follows: The earliest phenomenon that takes place when a number of persons gather together to hold a spiritistic *séance* is the movement of the table around which the persons are seated and on which they lightly place their hands. The table is moved in a jerky and undecided way at first, and, to all appearances, unconsciously by one of the sitters. But after a time the movement becomes regular and seems to indicate a force operating independently of the sitters. When this force is fully developed, three or four strong adults, deliberately exercising all their physical strength, can not control it. Even a very heavy dining-room table, on which many heavy objects have been placed, may rise up bodily in the air, and remain suspended for some seconds, and then descend to its normal position, without disturbing anything on it. The same

phenomenon takes place with desks, chairs, boxes or other furniture. When these physical manifestations have reached a certain degree of what is called "development," the phenomenon passes into a farther phase, and instead of the vibrations and tiltings of the table, clear percussive sounds, like tapping on wood with some solid object, such as a pencil, become perceptible. At first these tappings are very faint, but under favorable conditions become very distinct and amazingly emphatic and intelligent in character, a means in fact by which questions put by a sitter are answered and information conveyed, sometimes wholly unknown to anyone present.

A third phase of these physical manifestations is the lifting and shifting of heavy objects and pieces of furniture, without any contact or co-operation of the sitters. Grand pianos and heavy dining-room sideboards are made to change places, chairs with persons seated on them are raised to the ceiling and lowered again, without even a wish or suggestion on the parts of the sitters, in fact very often to their very great alarm and discomfort.

Luminous appearances, or "spirit lights," are another manifestation of spiritism. These "lights" are unlike any other kind of light known at present. Investigators like Sir William Crookes, have endeavored to reproduce them artificially, but have failed. These lights resemble glow worms or lightning bugs on a dark summer's night. If the room is darkened it will seem to be full of these glow worms rapidly passing from point to point, now showing their light, now hiding it, occasionally settling on an object and remaining stationary, and then again moving on. Sometimes these "spirit lights" are followed by the appearance of a luminous hand or head or face or body. Sometimes a phantom form will carry a "spirit light" in its hand and pass it up and down its form, in order to make themselves distinctly visible to all present. According to in-

vestigators of spiritism, these "spirit lights" are unquestionably controlled by independent spirit intelligences.

The final stage of physical manifestations is the "materialization" of human forms and faces. These are visible to all the persons assisting at the experiment. For these materializations a "sensitive" of highly developed power is required. The "sensitive" goes into a deep trance or state of insensibility. The trance is not produced by the hypnotic action of any one present, but takes place naturally after the circle is formed. This trance is generally preceded by some extremely unpleasant and repulsive manifestations, the "sensitive" apparently enduring a great deal of pain and discomfort, and laboring under some kind of physical oppression. After a time, however, these symptoms disappear and the "sensitive" passes into a state of profound insensibility. Now, in the darkened room, hands not belonging to anyone in the room, or the dim outline of faces or of human forms become visible and gradually seem to grow solid and clear. In some instances the entire form, enveloped in light drapery, is materialized, moves about the room, speaks to the sitters in an audible voice or whisper, and after a while *"dematerializes,"* and melts away before their eyes. The form seems to fall to pieces, as if a wax form were melting away, leaving only a white cloud or vapor behind, which lasts for a moment or two on the carpet or floor, through which it seems to pass. If the psychic conditions are favorable, these forms may have all the characteristics of human beings. The pulse or heart may be felt to be beating, and they seem to hear and to speak and to see, and they remain materialized for a considerable time.

II. The purpose of all these manifestations and phenomena is to prove to the persons assisting at them that there are extraneous and independent spirit intelligences present, and that under certain con-

ditions, they can and do hold communion with the living. Thus they will in many instances do things wholly contrary to all expectation or suggestion. They will propose experiments which never entered the minds of the investigators and which would seem to them difficult if not impossible of execution. They will display a sharpness and intelligence and ingenuity which amaze and bewilder the student, and force him to the conclusion that only supernatural spirit forces or intelligences can account for the phenomena. Efforts have been made to explain these manifestations on the *subliminal mind* theory. The psychologists assert that there is going on beneath the threshold of our ordinary waking consciousness a secondary, and far more mysterious process of mind-action, which is in many respects entirely distinct and independent of the normal and conscious working of the mind. In fact, man, they say, is possessed of two minds, each having its own particular sphere of operations. By means of this secondary or subliminal mind, the psychologists have endeavored to explain all the so-called spiritistic phenomena. Up to the present, the endeavor has failed. Many spiritistic phenomena may be satisfactorily accounted for by the subliminal mind theory, but there are many also which, according to the masters of the science, can not possibly be explained except on the theory of spiritism. Unless it be admitted that there are separate and independent spirit intelligences at work in these manifestations and materializations, they remain wholly unaccounted for on any theory up to the present known to science. Full allowance being made for fraud and deception and for the workings and vagaries of the subliminal mind, it can scarcely be denied with any show of reason, upon a thoughtful consideration of the evidence, that many of these spiritistic phenomena are the direct work of separate and independent spirit intelligences. The evidence is simply overwhelming.

The universal evidence of these materialized beings themselves is that they are the spirits of departed men and women, some of whom have learned the art of manipulating the delicate matter abstracted from the organism of the sensitive (astral substance) and of shaping it into bodies resembling those of their past earth life, and that they do this for the purpose of giving evidence that they have survived the shock of death and are able to communicate with the living. But are they really the spirits of the dead? Thus far no investigator has ever been able to establish the identity of any communicating spirit. When put to the test all attempts at identification utterly break down. In their efforts to identify themselves with certain dead persons, the intelligences have been detected in all kinds of lying and deception and skilful subterfuge. After years of effort with what seemed the same intelligence to establish the earth-identity that it claimed for itself, some communication is made, or some fact alleged, which shows conclusively that the intelligence has been fraudulently impersonating some dead person. Inconsistencies, incoherencies and contradictions in a communicator's account of himself; oblivion and error about things which it seems inconceivable that the real person should have forgotten or be mistaken about, and an intellectual standpoint inferior to his in life, are some of the reasons why the investigator will doubt the identity which the intelligence claims for itself. The real ultimate aim of the intelligence seems to be the *control of the sensitive*. The entire complicated machinery of mediumship is set in operation with this one end in view. Once full control of the sensitive is obtained, the masquerading intelligence seeks to accomplish the moral and physical ruin of its victims. "The ingenuity displayed in attaining this end, the tricks and subtleties resorted to in order to escape detection and to continue 'in possession,' were in one or two

instances of a kind passing all human comprehension and imagination, and the wonder is that anything like an escape from such toils is ever effected at all. In some instances this is only accomplished after the physical constitution of the victim has been completely ruined, in others the termination of the experiment is reached in the asylum, or in some institution for the cure of nervous disease." (Raupert, *Modern Spiritism.*)

"Ten thousand unfortunate people are at present (1877) confined in lunatic asylums on account of having dabbled in spiritism. Not a week passes that we do not hear that some of these unfortunates destroy themselves by suicide or are removed to a lunatic asylum. The mediums often manifest signs of an abnormal condition of their mental faculties, and among certain of them are found unequivocal indications of a true demoniacal possession. The evil spreads rapidly, and it produces frightful results." (Dr. Forbes Winslow, *Spiritual Madness.*)

When one considers the moral and intellectual confusion and chaos that flow from these spirit communications, one is driven to the conclusion that the intelligences are not the spirits of the dead, but evil and malign spirits, masquerading as the spirits of the dead, to accomplish the moral and physical and psychical ruin of their victims.

The "creed" of spiritism, as gathered from its most authoritative literature and from the disclosures of the spirit intelligences, is anti-Christian. However diverse their teaching may be on secondary matters, there is absolute agreement on the following points:

1. Christianity is not a special and unique revelation. It is one of many forms of high spirit manifestation, designed to enforce on man the binding obligation of the moral law, inherent in his nature.

2. Christ is not divine in the sense of the Catholic Church. He

is a purely human being, who possessed wonderful psychic powers.

3. The teaching of the Church regarding the passion and death of Christ is all wrong, due to human error and weakness.

4. There is no priesthood especially set aside and ordained by Christ to continue His work.

5. The Church with her Sacraments was never instituted to perpetuate the work of saving men's souls. She is purely human in her origin, her growth and her work.

6. The notion of retribution after death for sin committed in the flesh is folly. Man is daily and hourly preparing his own heaven and hell. There is no heaven or hell as taught by the Church. Man is in very truth *his own saviour.*

With this "creed" of spiritism before him, a Catholic can have no difficulty in determining the nature of the intelligences at work in these spirit manifestations. "But though we, or an angel from heaven, preach a Gospel to you besides that which we have preached to you, let him be anathema" (Gal. i, 8). These are evil spirits, bent on evil. Since the days of our blessed Lord their works and pomps have been known and resisted by the Church. They are lying spirits. They impel their victims to the most loathsome immoral abominations. They teach false and immoral doctrines. They abhor the presence of holy things. They deny Jesus Christ. "Every spirit that dissolveth Jesus is not of God. And this is anti-Christ of whom you have heard that he cometh, and he is now already in the world" (I John iv).

III. As regards the case of Peter, we would say that since he was ignorant of the nature and purpose of these spirit manifestations and materializations, his assistance at the *séances* was not sinful. He was led merely by curiosity. But for the future he is bound under pain of mortal sin to abstain from all participation,

even passive, in spiritism. Even if it were granted that the nature of the forces at work in spiritism is not sufficiently established to pass a final judgment on them, still sufficient is known to make it clear to every Catholic that these spirit intelligences are demonic in nature, and that all commerce with them is immoral and sinful and strictly prohibited by the law of God and of the Catholic Church.

IV. GIVING HOLY COMMUNION ON HOLY SATURDAY

In a certain parish church in a large city it has been the practise for many years to distribute holy Communion to the faithful during the solemn Mass on holy Saturday. Some priests maintain that this practise is forbidden by the Church, while others contend that it is lawful. Both sides appeal to authorities in support of their contention. What seems to you to be the truth of the matter? Is it lawful to give holy Communion to the faithful on holy Saturday?

Answer: It may be asked whether it be lawful to give holy Communion to any and all of the faithful who present themselves *during* the Mass on holy Saturday, and whether it be lawful to give holy Communion to the faithful *after* the Mass on that day. And finally, in case the Mass were postponed until a late hour on holy Saturday, would it be permitted to give holy Communion *before* the Mass, even very early, holy Saturday morning?

First, as to the lawfulness of giving holy Communion *during* the Mass or *after* the Mass on holy Saturday. It is impossible to say with absolute certainty whether it be lawful or not. Pope Benedict XIV maintained that it was not lawful (cf. *De sacrificio Missae, l. iii, ch.* 18). In our own day Cardinal Gasparri, one of the greatest living canonists, maintains that it is not lawful, except where there exists an immemorial custom. On the other hand, there are eminent authors who claim that it is lawful to give holy Communion to any and all of the faithful on holy Saturday. Let us examine a little more minutely these conflicting opinions.

It is certainly forbidden to distribute holy Communion on Good Friday, except as *viaticum,* because Good Friday is a non-liturgical day (*dies aliturgicus*), on which it is forbidden to say Mass or to

give holy Communion. Now, some authors, as Cardinal Gasparri, extend the prohibition to holy Saturday also. "Similis prohibitio (as on Good Friday) sed minus gravis, est pro sabbato sancto; nimirum juxta antiquam disciplinam in sabbato sancto fidelibus sacra communio non distribuebatur, cum hic dies esset aliturgicus, et fideles tantum in Missa communicare solerent. Haec disciplina etiam hodie servanda est" (Gasparri, De s. Euch., n. 1090).

That is to say, according to Cardinal Gasparri, the faithful did not communicate until the Mass on holy Saturday, which was not celebrated until the night between holy Saturday and Easter Sunday; because holy Saturday, like Good Friday, being a non-liturgical day, it was forbidden to say Mass or to give holy Communion on that day. The Mass that is now celebrated holy Saturday morning, really belongs to Easter Sunday morning, but has been gradually advanced, until now it is celebrated holy Saturday morning. Now it is maintained that when the Mass that originally was celebrated in the night between holy Saturday and Easter Sunday, was advanced to holy Saturday morning, the character of the day, which is non-liturgical, was not changed, and therefore the faithful may not receive holy Communion on holy Saturday. Although the Mass was advanced, the holy Communion was not advanced, and its distribution therefore on that day is not permitted. An exception, of course, is made for those places where a custom has grown up of giving holy Communion. But where the custom does not exist from time immemorial, the practise is forbidden. Gasparri cites the reply of the Sacred Congregation of Rites, September 22, 1837, to prove that while holy Communion is allowed in such places where the custom exists of distributing it on holy Saturday, still as a rule it is forbidden:

"Proposito dubio, 2 cum orationes tam praecedentes quam sub-

sequentes communionem Missae sabbati sancti loquantur in numero plurali, hinc quaeritur utrum liceat in eadem Missa post communionem celebrantis Eucharistiam ministrare fidelibus et praesertim cum particulis in eadem Missa consecratis"; S. R. C. reposuit: "ad *2um*: Negative, nisi adsit consuetudo." But to this it must be answered that in the latest edition of the authentic decrees of the Congregation of Rites, this particular decree is omitted.

On March 22, 1806, the Congregation of Rites being asked: "An liceat in sabbato sancto inter Missarum solemnia sacram Eucharistiam fidelibus distribuere, et num per eandem sumptionem sacrae communionis praeceptum paschale adimpleatur"; S. R. C. reposuit: "Affirmative ad utrumque." While this answer of the Congregation of Rites would seem to decide the question in favor of Communion on holy Saturday, in reality it does not, because an immemorial custom of distributing holy Communion to the faithful on holy Saturday existed in the diocese to which this decree was issued. However, the decree does seem to favor the opinion that it is lawful to give holy Communion to the faithful on holy Saturday, because, although issued in reply to a request for information from a place where the custom existed of giving holy Communion on holy Saturday, nevertheless the decree abscinds altogether from the fact that such a custom existed.

In former times, when the Mass that is now said on holy Saturday morning was said in the night between holy Saturday and Easter Sunday, it is certain that the faithful received holy Communion in it. The *Roman ordo I,* which gives the rites followed in or about the time of Pope Gregory the Great, A. D. 600, says: "Regarding little children it is provided that after they have been baptized (on holy Saturday) they shall take no food nor shall they be nursed until they have received the Sacrament of the body of Christ, and

every day during Easter week, they shall go to Mass and their parents shall make the offering for them, and they shall all communicate." "Illud autem de parvulis providendum est, ut postquam baptizati fuerint, nullum cibum accipiant, nec lactentur, antequam communicent sacramenta corporis Christi, et omnibus diebus septimanae Paschae, ad Missas procedant, et parentes eorum offerant pro ipsis et communicent omnes" (Mabillon, Musaeum italicum, tom. ii, p. 28).

As the Mass was gradually advanced until it is now said on holy Saturday morning, it seems but reasonable to conclude that the Communion of the faithful, which took place in it, was advanced also and that at present it is lawful to give holy Communion to the faithful in the Mass or after it on holy Saturday, since it is lawful to say Mass at all on that day, and since the holy Communion is not forbidden by any positive law or decree of the Sacred Congregation.

As we have just stated, Gasparri and others deny that the Communion of the faithful was advanced with the Mass on holy Saturday, and maintain that holy Saturday is still a non-liturgical day, *dies aliturgicus*, as far as holy Communion is concerned, but there seems to be no positive evidence available in support of their contention.

In the sacramentary of Pope Gelasius, which dates back to the end of the fifth century, the Rite of the Mass for holy Saturday is explained. The prayers of the Mass of holy Saturday, as therein contained, presuppose that hosts were offered by the neophytes and that the faithful communicated. The *secreta* of the Mass explicitly supposes *hostias a renatis oblatas fuisse et fideles communicasse.* And the *post-communio* of the Mass says: "Praesta, quaesumus, omnipotens Deus, ut, *divino murere satiati, et sacris mysteriis innovemur, et moribus.*"

In the Mass for holy Saturday, as contained in the *Roman Missal,* the *secreta* supposes that *oblationes hostiarum* have been made by the faithful; and it must reasonably be supposed that these hosts were offered in order that they might be consecrated and received in holy Communion. The *post-communio* of this Mass supposes others besides the celebrant of the Mass *sacramentis paschalibus satiatos esse.*

Against Benedict XIV, who says that the custom of not receiving holy Communion on holy Saturday is common throughout the Church, it is maintained that the custom is not general. There are many cities and dioceses where the custom of receiving holy Communion on holy Saturday has been established from time immemorial, "ut quotannis ego fieri video hic in civitate Parisiensi," says Father Many, S.S., Professor of Canon Law at S. Sulpice, Paris (Praelectiones de Missa, p. 315).

Many authors, as Merati, Cavalieri, St. Alfonsus, etc., say that where there is question of acts within the discretion of the agent, that is to say of acts that may be performed or omitted as one pleases, the omission of the act, even if continued for a long time, does not establish a custom against the act, unless the act was discontinued expressly for the purpose and with the intention of *creating an obligation to discontinue the act.* Such an intention is never taken for granted, but must be proven to have existed. To prove it, however, is extremely difficult.

"Quando agitur de actibus mere *facultativis,* id est, qui ad libitum poni vel omitti possunt, ut est communio in sabbato sancto, omissio actuum, etiam per longum tempus protracta, non inducit consuetudinem, nisi omittantur *cum intentione inducendae obligationis,* quae difficile demonstratur et nunquam praesumitur" (*ibid.,* p. 316. Reifenstuhl, in tit. *De consuetudine,* n. 129-130).

Therefore, although it may be true that there exists in many places a custom of not receiving holy Communion on holy Saturday, nevertheless we are not warranted in attaching to such a custom a binding force, neither in the places where the custom does not exist, nor even for the districts where it does exist.

O'Kane, in his treatise on the rubrics, p. 290, considering the various decrees of the Congregation of Rites on this matter, endeavors to reconcile their apparent contradictions by saying that holy *Communion may be freely administered on holy Saturday after Mass, but not during Mass, unless there be a custom in favor of it. It can not, however,* he continues, *be administered before Mass, as the permission does not extend to this, and the rubrics of the missal clearly suppose that before Mass there are no particles consecrated, except those reserved for the sick. Nor is the ciborium brought back to the tabernacle until after the Mass.*

With this latter statement, that holy Communion should not be given *before* the Mass on holy Saturday, we fully agree. No authority justifies such a practise, and, furthermore, it is not in keeping with the rubrics of the Mass for the day.

Father Noldin, S.J., says:

"Licet autem hac die sacram communionem distribuere fidelibus etiam ad satisfaciendum pracepto paschali, tum intra missam solemnem, tum extra eam, non tamen ante sonum campanarum; etenim post cantatum *Gloria,* cessat prohibitio distribuendi s. communionem fidelibus" (De Euch., n. 202).

This is not altogether correct, because the decree of the Sacred Congregation of Rites of March 22, 1806, to which he appeals for his assertion that Communion may be given *during* the Mass and *after* it, on holy Saturday, was issued to a parish where the custom existed for a long time, and the second decree of the Congregation

of Rites, July 28, 1821, which he cites says nothing about holy Communion on holy Saturday.

To sum up, therefore, we think that it is not permitted to give holy Communion to the faithful *before* the Mass on holy Saturday. There is no doubt but that holy Saturday was formerly a non-liturgical day on which it was forbidden to say Mass or to communicate the faithful. The Mass, however, of holy Saturday night, being advanced to holy Saturday morning, is the only reason for advancing the Communion of the faithful that was given in it. It would seem to follow, therefore, that the Communion should not be advanced to an earlier hour than the Mass itself. This is also in keeping with the rubrics of the Mass of holy Saturday, and there is no decree of the Congregation of Rites authorizing it.

But the same cannot be said against distributing holy Communion to the faithful *during* the Mass, or *after* it. No decree of the Sacred Congregation positively forbids it. It is clearly permitted wherever the custom prevails of giving it. In fact the decree of March 22, 1806, may be construed, and by some is construed, so as to permit it, whether the custom exist or not. The Code of Canon Law, Canon 867, sec. 3, states that on Holy Saturday Holy Communion may be given to the faithful at no other time than in the Mass or immediately after the Mass. There must be no interval between the end of the Mass and the distribution of Holy Communion, as is indicated by the phrase, "continuo ac statim a Missarum solemnibus expletis."

V. ANTICIPATING MATINS AND LAUDS AT TWO O'CLOCK

Among the former faculties of the diocese, revoked by the Code, was one permitting the priests to anticipate matins and lauds of the office, at two o'clock in the afternoon of the preceding day, *legitima concurrente causa.* By virtue of this faculty, Fr. X. has formed the habit of anticipating matins and lauds every day at two o'clock, whether he has a sufficient reason or not. Generally speaking, he has a sufficient reason; however, there are days when he does not seem to have any other reason than the mere habit. Now, is the *habit* alone, independent of any other reason, a legitimate excuse for anticipating the recitation of matins and lauds at two o'clock in the afternoon of the preceding day? And if it is not, and if there is no other legitimate reason for anticipating the office at two o'clock, would the recitation of matins and lauds at that hour be, nevertheless, *valid,* even though illicit, or does the law of the Church require in such a case that the matins and lauds be repeated?

Answer.—The universal custom prevailing in the Church to-day, and which has the sanction of law, permits the recitation of matins and lauds of the next day's office, on the afternoon of the preceding day, *quando sol medium cursum tenet inter meridiem et occasum;* that is to say, when the sun is half way between the meridian and the western horizon. As this time varies according to the different seasons of the year, a calendar is found in the breviary, indicating the precise hour at which the matins and lauds may be anticipated for every month of the year. Thus while in the month of December matins and lauds for the following day may be anticipated at two o'clock in the afternoon of the preceding

day, in the month of June they may not be anticipated before four o'clock, because the course of the sun between the meridian and the horizon for Italy and Western Europe, where the custom originated, is four hours shorter in the month of December than in the month of June.

But many and grave theologians maintain that nowadays matins and lauds may be anticipated at two o'clock in the afternoon of the preceding day, *every day in the year,* apart from any special privilege or faculty, and that the anticipated recitation of matins and lauds at that hour is always and under all circumstances *valid, i. e.,* need not be repeated, even though recited without a legitimate reason, and if there be a legitimate reason, the recitation will also be *licit.* This opinion is conceded by all to be at least probable, both by reason of the arguments advanced in its support, as well as by the weight of the authorities who support it. Among those who maintain it we find such names as Salmanticenses, Sanchez, Viva, Ballerini-Palmieri, D'Annibale, Sabetti, Bucceroni, Genicot, Noldin, etc., etc. Moreover, as often as the Holy See has been petitioned to give an authoritative answer to this question, it has steadfastly refused to settle the difficulty and invariably refers the petitioner *ad probatos auctores.* Now as many of these approved authors, to whom we are referred by the Holy See, maintain that it is lawful to anticipate matins and lauds at two o'clock in the afternoon, every day in the year, it follows that it is lawful to do so as long as the Holy See does not expressly condemn it, because the Holy See is perfectly cognizant that many and grave theologians hold that it is lawful to anticipate the office at two o'clock, every day in the year, without any special permission. It may be remarked in passing, that permission is sometimes given by the Holy See to anticipate matins and lauds at one o'clock in the afternoon,

and the priests of St. John of God have the special privilege of anticipating the office even at noon of the preceding day.

If we examine more closely the reasons which induce these theologians to maintain that the office may be anticipated every day in the year at two o'clock in the afternoon, we find them to be somewhat as follows: At first, we know, matins and lauds were recited during the night preceding the day on which the rest of the office was to be said. The first nocturn was said at nine o'clock at night, the second at midnight, and the third at three o'clock in the morning, followed by lauds toward the dawn. The night was divided into vigils, as the day was divided into hours, and each vigil and each hour had its own prayer. (Cf. Cath. Encycl. art. Breviary.) By degrees, however, the custom grew up of reciting the matins and lauds of the next day's office after sunset on the preceding day, *i. e.*, at the end of the evening or eventide or at nightfall. Gradually, however, even this time was anticipated and the custom grew of reciting matins and lauds of the next day's office, not at the *end* of the evening, but at its beginning; that is, when the sun was half way between the meridian and the western horizon.

Finally, the last stage in the development of this custom of anticipating matins and lauds was reached when, instead of reckoning the evening according to the divisions of the *natural* day, the clergy began to compute the evening according to the *ecclesiastical* day, and as the evening of the ecclesiastical day began at the hour when it was customary to recite vespers in choir, it became customary to anticipate matins and lauds of the next day's office as soon as vespers were recited in choir. As the hour for reciting vespers in choir was advanced, the hour also of anticipating matins and lauds was advanced. And, as at the present time it is the custom throughout the Latin Church to recite vespers in choir at two o'clock in the

afternoon, so also it is the custom to recite matins and lauds at about the same hour. Because, according to the method or system of computing time in this matter, as adopted by the Church, as soon as vespers are over in choir the day is ended and the time following vespers belongs to the next day, and matins and lauds of the next day's office may be recited. St. Thomas says:

"Quantum ad ecclesiasticum officium, incipit dies a vesperis; unde si aliquis post dictas vesperas et completorium dicat matutinum, jam hoc pertinet ad diem sequentem" (Quodlib v, art. 28).

Of course there are many theologians who deny that a priest satisfies the obligation of the office, if he anticipates matins and lauds every day in the year at two o'clock, without a special permission from the Holy See. In fact, St. Alphonsus calls their opinion the more common opinion of theologians, and the one, in his estimation, nearer the truth. Nevertheless, with the array of theologians we have already cited in favor of the opposite opinion, and in view of the arguments they advance in its support, it can not be denied that this opinion is solidly probable, both internally and externally, and may be followed in practise by any priest, *tuta conscientia.*

This position seems also to be supported by the answers of the Congregation of Rites. That Sacred Congregation, when asked:

"Quanam hora liceat incipere privatam recitationem matutini cum laudibus vespere diei praecedentis?" returned the following answer, March 16, 1876:

"Privatam recitationem matutini cum laudibus vespere diei praecedentis incipi posse, quando sol medium cursum tenet inter meridiem et occasum."

Asked again: *"Utrum in privata recitatione matutini pro insequente die incipi possit hora secunda pomeridiana, aut standum sit*

tabellae directorii dioecesani omni tempore?" the Sacred Congregation, on May 12, 1905, returned the following reply: *"Consulantur probati auctores."*

From these two replies of the Congregation of Rites we gather: first, that if the opinion which permits the anticipation of matins and lauds at two o'clock on the preceding day were devoid of all probability, the Holy See would long since have condemned it; and secondly, since the Congregation of Rites refers us to approved authors to determine whether it be lawful to anticipate the office at two o'clock of the preceding day, and since many of these approved authors maintain that it is permitted to anticipate, without any special permission, at two o'clock in the afternoon of the preceding day, the matins and lauds of the following day's office, we logically conclude that the Holy See approves the practise.

As regards Fr. X.'s practise of anticipating matins and lauds every day at two o'clock, we do not see how it can be condemned. Sometimes, he says, he has a sufficient reason and sometimes he has no reason but the habit. In that case the habit is a legitimate reason. It must be kept in mind that, in the private recitation of the office, the observance of the canonical time or hour binds only *sub levi.* Therefore, a *levis ratio* will excuse from all sin. But the convenience that arises from the *habit* of anticipating the office at two o'clock is a *levis ratio,* and, therefore, justifies the anticipation at that hour. Under no circumstances would Fr. X. be bound *sub gravi* to repeat matins and lauds, said at two o'clock without any reason whatsoever.

VI. ABSOLVING NON-CATHOLICS

The grandfather of a young priest is dying. He was born and brought up a Methodist, and desires to die in the same faith. He has lived a good and conscientious life and has kept the Commandments the best he knew how. He has always manifested considerable affection for his grandson, the young priest, but has never given any sign or indication that he believed in the Catholic Church or desired the ministrations of her priest. He is now close to death, but his sentiments remain the same. He is evidently going to die in the faith of his forebears. His grandson, the young priest, is very much concerned for his grandfather's salvation. He would like very much to absolve him conditionally and even to anoint him if it were lawful. Would it be right or of any benefit to this dying man, under the circumstances, for his grandson, the priest, to absolve him or to anoint him?

Answer.—The case here submitted for consideration is the case of a baptized non-Catholic man, who is in the full possession of his faculties and who is very near death. If the man were unbaptized (and there are so many unbaptized Protestants in the world to-day) the case would have to be treated in a different way than it is treated here. Also if the man were unconscious, even though validly baptized, the treatment of the case would differ from what is here given. This is the case, therefore, of a validly baptized Protestant, in the full possession of his senses, who is in good faith as regards his religion, and who is very near death. May a priest absolve him *sub conditione*, and might he even be anointed?

Theologians do not seem to agree as to whether such a man, under

the circumstances, may be absolved and anointed or not. First, as regards the absolution. Fr. Gury says that such a man may be absolved even though, through ignorance, he should entertain a horror for Confession and the Sacrament of Penance, provided only that he would receive the Sacrament of Penance if he knew it to be of divine precept, and that he be sorry for his sins and that he ask God's pardon. To absolve such a man, Fr. Gury says, was the general practise of priests in Germany and Switzerland in his day (Cas. i, 190).

Fr. Berardi, the Italian theologian, says that whatever might be the case in Germany or Switzerland, such a man ought not to be absolved, if the case happened in Italy. "Quidquid sit de Germania et Helvetia, certo apud nos haec disciplina non adest, ut bene observat S. Lig. n. 483; unde illos absolvere non deberemus" (Praxis conf., p. 639).

Fr. Lehmkuhl thinks that in a case like the one here under consideration the priest should endeavor to get the dying man to make an act of perfect contrition as well as acts of faith and hope; then, if he can be induced to acknowledge himself a sinner before God, and to express sorrow for his sins, he may be absolved conditionally and secretly, provided he desire the priest to help him, in any way he may be able, to save his soul. It is useless, says Fr. Lehmkuhl, to ask the man whether he would be willing to make a confession to a priest, if he knew it were the will of God that he should do so, because it is not a question of what the dying man would do, but of what he does *actually* desire.

"Si autem tractandum est cum acatholico (baptizato) sensibus non destituto quem propter instantem mortem et propter periculum inducendi gravem tentationem, cui forte succumbat, non possint prudenter aperte monere de vera Ecclesia: ante omnia

contritio perfecta cum aliis actibus praeviis elicienda est; dein ut dari possit clam absolutio conditionata, praestat eum adducere, ut se peccatorem coram Deo et me declaret, et concepto dolore de peccatis, etiam declaret, sibi placere, ut per meum auxilium in assequenda melius vita aeterna, quantum possim, ipse adjuvetur. Nam quod aliquando dicitur proponendum illi esse, num, si sciret necessarium esse, vellet confiteri et absolvi, hoc in se nihil est; non enim quaeritur quid vellet, sed quid velit et re ipsa faciat" (vol. II, n. 515). Schieler-Heuser takes the same view of this case as Fr. Lehmkuhl, Ballerini, and others. He says: "In such a case it is, of course, more difficult to produce anything out of the past life which can, in any way, be construed as a confession and a desire for absolution, unless we are to be content with the man's *bona fides, "quam probabiliter adesse seu adfuisse externe sit manifestatum."* For if to this *bona fides* sorrow has been added—and it is not certain that it has not been added—it seems that there is *implicite,* the manifested desire to participate in those remedies which are necessary, and, therefore, in the absolution of the priest. If we have here, with Ballerini, Lehmkuhl, and Aertnys, proceeded to the utmost limits, and if the arguments in favor of this extreme liberality in the administration of absolution are not always cogent, let us not be accused of laxity or of any want of reverence for the holy Sacrament of Penance. Such liberality seems to have been fully intended by Him "who came to seek and to save that which was lost," and who wishes not the death of the sinner; who opened the gates of paradise even to the thief on the cross, and who has placed the keys of heaven in our hands. We safeguard the sanctity of the holy Sacrament by adding the condition, and the Lord instituted His Sacraments for man; *"in extremis autem extrema tentanda sunt."* ("Theory and Practise of the Confessional," p. 652.)

St. Alphonsus does not justify this practise, as may be seen by consulting his treatise on confession, n. 483, where he says: "Heretici enim, etiamsi in eo casu dent signa poenitentiae, non debent absolvi, nisi expresse absolutionem petant, quia tales nunquam prudenter praesumi valent ea signa praebere in ordine ad confessionem, a qua summopere abhorrent." However, when we consider that theologians like Lacroix, Reuter, Noldin, Genicot, D'Annibale, Lehmkuhl, etc., hold and teach that it would be lawful and prudent in the above case for the young priest to absolve his grandfather, we do not see how he can have any scruples about doing so, *servatis servandis.*

But as regards the administration of Extreme Unction to such a person, it seems to be the general opinion of theologians that it is not lawful, as long as the patient is in the possession of his faculties and conscious, because it is not a necessary means of salvation in that case, and can scarcely be given without serious scandal. To quote again from Lehmkuhl:

"Imo in iis hereticis baptizatis, quos in bona fide versari sumi potest, *fortasse* remedium reconciliationis erit, applicabile utique tantum, si sensibus destituti fuerint atque si externae sint conditiones ejusmodi, ut sine majoris mali-periculo haec adjumenta adhiberi valeant; quamquam etiam quoad hoc remedium satis dubium est, num in piis illorum hominum actibus, sufficiens intentio contineatur." (Ext. Unct., n. 568.) The Code, in Canon 731, rules that it is forbidden to give the Sacraments to baptized non-Catholics though they are in good faith unless they renounce their errors and are received into the Church. Nevertheless, the controversy as here set forth still exists among theologians.

VII. IS IT EVER PERMITTED TO TELL A LIE?

A young unmarried girl is criminally with child. Her mother sends her to a lying-in hospital in a distant city before anything is known by the neighbors of her condition. The mother pretends to her other children and to the neighbors that her daughter is employed in a store in New York. She tells them frankly that she is. After the birth of the daughter's baby and before her return home, the mother tells the neighbors that her daughter does not like New York and is coming home. Finally the daughter arrives home and continues the deception, giving many details of her "store experience" in New York and what she thought of the city. Of course she had not been in New York at all. Is it lawful for the mother and daughter to say these things which they know are untrue, and to deceive others, even though their object in practising this deception is quite good and praiseworthy? Is it not making the end justify the means and doing evil that good may come from it?

Answer.—A writer in the review *Ami du Clergé* some years ago said well: *There is no matter in moral theology so involved and so headsplitting as the theory of lying. "Il n'est pas des matieres en morale aussi embrouillées, aussi casse-tête que la théorie du mensonge."* The source of all the difficulty seems to be the definition of a lie, as generally accepted by the theologians. That definition was first given by St. Augustine and from him has been adopted by practically all Catholic theologians. St. Augustine defines a lie as *locutio contra mentem.* This definition, I say, has been adopted by the Latin fathers and by Catholic theologians generally. Cardinal Newman says: *"The Greek fathers thought that, when there was a* justa causa *an untruth need not be a lie. St. Augustine took another view, though with great misgiving; and whether he is*

rightly interpreted or not, is the doctor of the great and common view that all untruths are lies, and that there can be no just cause of untruth." (Apologia, Note G.) The principle that *it is never allowed to tell a lie,* seems to be deep seated in the human conscience and to be admitted by all, just as it is universally admitted that it is not allowed to steal, or to murder. There can be no quarrel about the principle. It is only when we come to define *a lie* that the trouble begins. If it be admitted that all lying is sinful, and if we accept St. Augustine's definition of a lie, as Catholic moralists generally do, *locutio contra mentem ad decipiendum prolata,* then it follows that every time we speak contrary to what is in our mind for the purpose of deceiving others, we lie and, therefore, we commit sin. But it is admitted, on the other hand, by all moralists that there are cases when it is permitted to say the thing that is not in our mind, even with the intention of deceiving others, and according to the definition just given, that would be a lie. For instance, there are times when it is impossible to keep a secret that must be kept at all hazards, except by saying the thing that is not in our mind. Of course the theologians were perfectly cognizant of this all the while, but still the definition of a lie, borrowed from St. Augustine, had taken such deep root in Catholic theology that it could not easily be retouched or revised. On the one hand they admitted that the definition made all speaking contrary to what was in the speaker's mind, a lie; but on the other hand they could not deny that there were cases when it was lawful to say the thing that was not in one's mind. To save the definition, and at the same time to save the truth, the theologians were compelled to invent the artificial theory of *mental reservations.* Though elaborated with great skill and ingenuity, the theory is quite artificial and invented solely for the purpose of permitting one to do that which one

was clearly bound to do, but which the doctrine of lying, as generally expounded, seemed to condemn. *"In these later times,"* says Card. Newman, *"this doctrine* (of St. Augustine) *has been found difficult to work, and it has been largely taught that though all untruths are lies, yet that certain equivocations, when there is a just cause, are not untruths."*

Archbishop Kenrick says: "It is confessed by all Catholics that in the common intercourse of life all ambiguity of language is to be avoided; but it is debated whether such ambiguity is ever lawful. Most theologians answer in the affirmative, supposing a grave cause urges, and the true mind of the speaker can be collected from the adjuncts, though in fact it be not collected."

To use mental reservations or equivocations without a just and sufficient cause is sinful. But when it becomes necessary to dissemble or to mislead in order to keep a secret or to repel an impertinent inquirer, or when dealing with children, it is lawful to equivocate, or rather to play upon words or to use evasions. This is the ordinary doctrine given in the text-books of moral theology. Objection has been made to the whole theory of mental reservation on the ground that it is an artificial system, suited only to the learned and the cultivated, but of no avail for the simple minded and the ignorant. Thus, while the learned and the ignorant speak the same thing, the learned and quick-witted save themselves from the sin of lying by using a mental reservation, while the simple and ignorant, not versed in the theory of mental reservation, find themselves in the necessity of telling a lie.

Fr. Genicot says that we need not find fault if the simple minded and uneducated call a *lawful lie* what the theologians call a broad mental reservation (Moral I, p. 378). Of course the difficulty remains that these same simple minded and uneducated peo-

ple don't know that there are *lawful lies.* They think every lie is a sin, and still they feel compelled sometimes to tell lies or untruths as the only means left them for concealing the truth or for keeping a secret.

Fr. Berardi has this to say on the subject: "The theologians seem to have experienced an excessive fear of these condemnations (three propositions regarding lying condemned by Pope Innocent XI, 1679), and introduced into this matter incredible confusion. They first of all taught that a strict mental reservation could never, for no object whatever, become lawful, because it is always a lie and intrinsically evil. They say that a mental reservation in a strict or narrow sense is one whose meaning can not, morally speaking, be detected, as for example, if one, when asked if Peter is alive, should answer: "No, he is dead," meaning *civilly dead,* either by reason of some crime or because he has entered a religious order. But then they admit that it would not be making use of a strict mental reservation if an adulteress should maintain that she was innocent of adultery when questioned about it (meaning that she had been made innocent by sacramental confession!), or that she had never committed adultery (meaning by adultery, idolatry!) (S. Alf. III, 162). How does this square with the definition of a pure mental reservation, just given, which the theologians say is never allowed? If they had said that the woman could deny her sin, at the same time using the reservation *"that I should tell you,"* I would not find fault. But that they should deny that a pure mental reservation, or one whose sense can not be divined, is sufficient to excuse a lie and a sin, and nevertheless concede that these same reservations are no longer purely or strictly mental, but intelligible, that is something that I can not understand" (Praxis Conf. I, 1092).

If a theologian as competent as Berardi finds difficulty in applying practically the theory of mental reservation, it will be readily understood how the simple and ignorant are quite unable to use it as a means of concealing a truth or keeping a secret from those who have no right to know it. In the face of this insurmountable difficulty many moralists think that the definition of a lie, as commonly given in the text-book ought to be revised; that is to say, it ought to be made to read something like this: A lie consists in speaking contrary to one's mind, with the intention of deceiving one *who has a right to the truth.* If the person has no right to the truth it ought not to be called a lie if the truth is concealed from him by saying the thing that is not in one's mind.

Such speaking against one's mind might be called an untruth, but not a lie. Not every taking of human life is murder, and not every taking of another's goods is stealing, and, therefore, not every speaking contrary to one's mind ought to be called lying. As there is taking of human life that is justifiable, and, therefore, not sinful, and as there is taking of another's property that is not stealing, and, therefore, not a sin, so there must be untruths that are not lies and, therefore, not sinful. There are many occasions when a person has no right to know the truth and to deny the truth to such a person is justifiable and, therefore, not sinful.

Of course there is a difficulty here in the case of exceptions to the rule of veracity, and it is "that very little external help is given us in drawing the line as to when untruths are allowable and when not; whereas that sort of killing which is not murder is most definitely marked off by legal enactments, so that it can not possibly be mistaken for such killing as *is* murder. On the other hand the cases of exemption from the rule of veracity are left to the private judgment of the individual, and he may easily be led on from acts

which are allowable to acts which are not. . . . If I had my own way I would oblige society, that is, its great men, its lawyers, its divines, its literature, publicly to acknowledge as such, those instances of untruth which are not lies, as for instance, untruths in war; and then there could be no perplexity to the individual Catholic, for he would not be taking the law into his own hands" (Card. Newman).

If this woman and her daughter thought that it was lawful for them, under the circumstances, to say something that was not true, in order to hide the truth from those who had no right to know it, then we would say that they told an untruth, but not a lie, or if a lie, then only a *material lie.* Murder is the *formal* transgression of the commandment, "Thou shalt not kill," but accidental homicide is the *material* transgression. The *matter* of the act is the same in both cases; but in the *homicide* there is nothing more than the act; whereas in *murder* there must be the intention, which constitutes the formal sin. So a man who simply to keep himself from starving takes a loaf that is not his own commits only the *material,* and not the formal, act of stealing, that is, he does not commit a sin.

So we say, that if a person says something that is not true in order to keep a secret that must be kept, then such a person commits the *material,* but not the *formal,* act of lying. "If I allow of *silence,* why not of the method of *material lying,* since half of a truth *is* often a lie? And, again, if all killing be not murder, nor all taking from another stealing, why must all untruths be lies? Now I will say freely that I think it difficult to answer this question, whether it be urged by St. Clement or by Milton" (Card. Newman, Apol., Note G).

VIII. DUTIES OF A WITNESS

In a certain parish, where it is difficult to enforce the civil law, the illegal sale of intoxicating liquors was causing much trouble, and in particular it had a baneful effect on the morals of the young people. The parish priest, in order to put a stop to this illegal liquor traffic, asked the civil authorities to take action in the matter, and caused B and other witnesses to be subpoenaed to give their evidence in court, on a certain day, against A, an illegal liquor dealer. On the day appointed for the court none of the witnesses appeared. Some of the witnesses were willing to appear, but both A and B persuaded all the witnesses not to appear at the court. This caused some trouble and expense to the civil authorities. Warrants were issued for the arrest of all the witnesses. Some of them were arrested and fined, but B and others escaped. Evidence enough was obtained to convict A.

Now B comes to Confession, but the priest refuses him absolution until he would consent to make some settlement with the civil authorities. B refuses to do this. Then the priest offers B that he will intercede with the civil authorities in his behalf so that they would be as lenient with him as possible, but B refuses to submit under any consideration, and says that he is satisfied if the civil authorities will take him by force.

Did the priest act right or wrong in refusing him absolution?

Answer.—Strictly speaking, we think the priest exceeded his powers when he refused absolution to B because B refused to make restitution to the civil authorities for the expense his refusal to testify caused them. B was subpoenaed by lawful authority to appear in court and give evidence against an illegal liquor dealer.

The cause was a just cause, the public good. Therefore, B was bound in conscience to obey the summons. In fact, objectively speaking, he was bound *sub gravi* to obey the mandate of the court or of the grand jury and to appear in court and to tell what he knew. Of this there is no doubt. In a grave matter we are obliged to obey *sub gravi* legitimately constituted authority, when there is no sufficient reason for refusing to obey. In the present instance we suppose that B had no good and sufficient reason for refusing to give his evidence against the liquor dealer. He might have had what seemed to him a good reason for not appearing, but we suppose that he did not have any such reason. He was bound, therefore, in conscience, *sub gravi*, to obey the subpoena, and to go into court and to testify. He was bound by the virtue of obedience to do so. The civil authorities had a *right* to subpoena him. He, on his part, had a corresponding *obligation* to obey, and that obligation was binding in conscience. B was also bound to obey the summons of the magistrate by reason of the obligation laid on him by the virtue of legal justice. Every citizen is bound to render to the State his just share of service in order to promote the public good. Among these services is the duty of serving on juries and appearing as a witness, when commanded by the civil authorities to do so. All this, of course, is known and admitted by all. B was guilty, theoretically or objectively, of a grave sin of disobedience to lawful authority in refusing to obey the court in a grave matter. But obedience and legal justice do not impose an obligation of restitution, if they are violated. B was guilty of a sin of disobedience and of neglect of his civil duties, but to hold him bound to make restitution, one would have to show that B in refusing to testify, violated also the virtue of strict commutative justice. For only those who violate commutative justice are bound to restitution.

The question, therefore, arises: Did B, by refusing to testify when he was summoned by lawful authority to do so, violate the virtue of commutative justice, and make himself responsible thereby for the expenses his refusal to testify caused the court in securing the liquor dealer's conviction? St. Liguori, De Lugo, Lessius, etc., etc., maintain that B in refusing to obey the summons of the court sinned against charity, or against obedience, or against legal justice, but not against commutative justice, and that, therefore, he incurred no obligation to make restitution for any expense caused to others. B would not be bound to make any restitution, even though through his refusal to obey the court's summons and to testify, an innocent defendant might lose his suit and incur heavy damage. According to these theologians the mandate of the court or the subpoena imposes an obligation of obedience, but not of justice, and whoever disobeys it commits a sin of disobedience, but not of injustice. The words of St. Liguori are:

"An teneatur ad restitutionem testis, qui fugit post citationem?

"Affirmant Sotus, Sanchez, etc., etc., quia eo ipso, quo testis est citatus, tenetur ex justitia testimonium dicere; prout si judex praecipit alicui, ut proferat scripturam ad causam pertinentem, tenetur ipse ex justitia illam exhibere, alias debet damnum parti restituere. Negant vero communius et probabilius idem Lugo, et Molina, et probabile putant Bonacina ac Lessius cum Sylvio. Ratio est quia citatio illa non imponit obligationem justitiae, sed tantum obedientiae. Nec obstat paritas allata scripturae proferendae: nam bene respondet Lessius quod scriptura illa sine dubio ex justitia proferri debet, cum sit res externa de qua respublica juste potest disponere, sicut de aliis bonis civium, quando oportet ad jus illorum tuendum: non sic de obligatione testificandi" (lib. 5, c. 3, 270).

De Lugo admits that if a witness gives false evidence in civil

or criminal suits and thereby injures another, he sins against justice and is bound to make restitution. But when a witness acts merely in a negative manner, that is to say, when he refuses to testify or conceals the truth and thereby injures another, does such a witness sin not only against obedience and charity, but also against justice, and is he bound in conscience to make restitution? "Communior sententia," says De Lugo, "docet peccare contra justitiam, et cum onere restituendi, ita Sotus, Navarrus et alii. Hinc inferunt multi, idem esse de teste, quem judex vult citare, ipse autem de industria se abscondit, ne possit illi praeceptum judicis intimari: *vel saltem postquam citatus est, dolose eludit citationem ne compareat,* vel postquam comparuit, ne interrogetur, ita Sanchez. Alii docent, hoc non esse peccatum contra justitiam commutativam, sed contra charitatem, contra obedientiam, vel contra justitiam legalem, aut contra religionem juramenti; atque ideo non afferre debitum restituendi. Hanc dicit esse probabilem Lessius, et ipse videtur in eam inclinare, non tamen audet definire. Eamdem docet expresse Molina," etc.

This latter opinion De Lugo calls *verior,* because although a witness has been subpoenaed to testify, still the law does not bind him or constrain him as yet; *imo hoc ipsum admittit* (Malderus). *in eo cui jam legitime insinuata est judicis citatio, et falso praetextu apposuit impedimentum, ut se excusaret.* Even if the witness should appear in court and were examined or questioned by the judge, De Lugo holds that he would be bound to testify to the truth only by reason of his oath or on account of the command of the court, *non tenetur aliunde testari verum, nisi vel ex religione juramenti, vel ex praecepto judicis; ergo tacendo veritatem non peccat contra aliam virtutem.* It can not be affirmed of the witness, as it can of the judge, that his office of witness obliges him to testify to the truth. The judge has a quasi-contract binding in justice to inves-

tigate the truth, once he accepts the office of judge. The witness, on the contrary, refuses to accept the office of witness in our case, and sins by disobedience in thus refusing, but does not sin against justice, since he refuses the office of witness.

Now some will say that, although a witness refuses to testify, even though subpoenaed, still the State may supply for him the consent which he refuses, and thus he does in reality assume the office and duties of a witness, even against his will, because the State supplies his consent. The State can do this in the transfer of property and why not in imposing on him the duty of giving evidence? This, says Lugo, would be *satis durum et novum, quod respublica seu magistratus imponat subditis obligationem de justitia circa actiones personales. . . . Non ergo videtur dicendum quod judex possit obligare testes ex justitia ad ferendum testimonium sed solum ex obedientia.*

The conclusion that De Lugo arrives at, after much discussion, is this:

"Habemus ergo testem non testificantem peccare quidem contra obedientiam, non contra justitiam, et ideo non teneri ad restitutionem, nisi positive falsum testificando, fuerit causa damni illati" (De Lugo, de justitia et jure, disp. 39, sect. 1).

B is not answerable for the damage or expense that his refusal to testify may have caused the town authorities or private individuals. The priest, therefore, could not lawfully condition the absolution upon the restitution of the penitent. B refused to accept the office of witness which the magistrate sought to impose on him by subpoenaing him; therefore, B had no quasi-contract, binding in justice and entailing restitution, to give evidence against the liquor dealer. In refusing to accept such office, he may have sinned against obedience and legal justice or the duties of a good citizen, but he did not

sin against commutative justice; and the violation of commutative justice alone entails the obligation of making restitution. If B were duly sorry for his sin of disobedience, if he looked on it as a sin, and were otherwise disposed, he had a right to receive absolution.

IX. WHAT OFFICE MUST A SUBDEACON SAY ON THE DAY OF HIS ORDINATION?

Several young men are ordained subdeacons between eight and nine o'clock in the morning, on the feast of St. Mark, the evangelist. They are not certain as to how much of the office they are obliged to say on that day. Some recited all the little hours that morning, before their ordination to the subdeaconate, as they did not know how else to employ their time. Others said Prime, Tierce and Sext, before receiving subdeaconate, while others thought themselves obliged to say the whole office for that day, from Matins on. Were those, who recited all four little hours before their ordination to the subdeaconate, obliged to repeat any or all of them afterward, and, if obliged to repeat, where must they begin? Is there any reason for believing that the whole office for the day is obligatory on subdeacons, on the day that they receive subdeaconship? Incidentally, how would you interpret the penance, *nocturnum talis diei,* imposed on subdeacons?

Answer.—The divine office is obligatory on subdeacons from the moment they receive the subdeaconate. Only that part of it, however, is obligatory for them on the day of their subdeaconate, which corresponds to the canonical hour at which they were ordained. Hence a subdeacon is bound to recite, on the day of his ordination to the subdeaconate, that part of the office which is recited in choir by those who are obliged to say the office in choir. La Croix thinks that if a subdeacon received his subdeaconate at eleven A. M. he would be bound to say only the vespers and compline of that day, as the little hours will already have been recited in choir by that time. St. Alphonsus, however, differs with La Croix on this

point, maintaining that the subdeacon is bound to recite that part of the office which corresponds to the canonical hour of Sext; therefore, from Sext on. And this seems to be the better opinion, and the one generally followed. In the case of the young men ordained on St. Mark's feast, their obligation began before nine o'clock A.M., therefore they are obliged to recite Tierce, as that is the part of the Breviary that corresponds to the hour of nine o'clock in the morning. Originally the office was recited as follows: Matins were said immediately after midnight; Lauds were said at the dawn; Prime after sunrise; Tierce at nine o'clock in the morning; Sext at noon; None at three o'clock in the afternoon; Vespers at sunset, and Compline at dusk. If the subdeaconate were not conferred until ten A.M. the office would be obligatory from Sext on. As regards the question as to whether the young men who recited all four little hours before receiving the subdeaconate, there exists a difference of opinion among theologians. Some theologians, as Tournely, Bonacina, La Croix, etc., maintain that the young men did not satisfy their obligation by reciting the little hours before ordination, because an obligation can not be satisfied before it is contracted. Now, these young men, at the time when they recited the little hours, were under no obligation to recite them. Afterward, from nine o'clock A. M. on, they are under an obligation to recite that part of the office that corresponds to that canonical hour of the day, namely, Tierce, which obligation has not yet been satisfied. To this, Lugo, Tamburini, etc., make reply, that a debt may be paid by anticipation, when it is morally certain that it is going to be contracted. Both these opinions are probable, in the estimation of St. Liguori (lib. 5, c. 2, v. 140).

Again it is urged that the subdeacon is obliged to recite the office in the name of the Church, but a young man, before his deacon-

ship, can not recite the office in the name of the Church, and, therefore, by such recitation, he does not satisfy the obligation that is laid upon him later in the day.

But to this it may be replied, says St. Liguori, that an excommunicated priest does not and can not pray in the name of the Church, and yet he is bound to say his office, and, by saying his office, he satisfies his obligation in this regard. Therefore, to satisfy the obligation of reciting the office, it is not necessary that it be recited in the name of the Church. And this opinion the holy doctor calls probable. These young men, therefore, who recited the little hours in the morning before their ordination to the subdeaconate, can not, strictly speaking, be required to repeat any one of them, although they received subdeaconship about nine A. M. However, in practise, it is more adviseable to have them say, after their ordination, the hours of the Breviary that correspond to the hour of their ordination. Such a practise removes all scruples on this score, and quiets the conscience at a time when young men are apt to be worried by many false fears.

There is no ground whatever for thinking that a newly ordained subdeacon is bound to recite the whole office of the day on which he receives subdeaconship. There may be subdeacons who, through overanxiety, reason themselves into such an obligation; but, as a matter of fact, the obligation does not exist, neither in law nor in fact. The reason is indicated above.

The words, *nocturnum talis diei,* indicating the penance imposed on the newly ordained subdeacon by the ordaining prelate, in gratitude for the order received, mean either the nocturn of the ferial office, or the first nocturn of the feast, or the first nocturn of the dominical office, accordingly as the ordination takes place, either on a feria, a feast day, or a Sunday. The Congregation of Rites

July 10, 1903, answered: "Verba Pontificalis Romani *nocturnum talis diei* intellige de unico nocturno feriali, vel de primo dominicae, ut in *Psalterio, i. e.,* duodecim Psalmorum cum suis antiphonis de tempore, quem Episcopus ordinans designare potest, vel ipsius diei, quo habet ordinationem, vel alterius, pro suo arbitrio. Quando vero Episcopus nihil aliud exprimit, quam id quod verba Pontificalis referunt, discendum est nocturnum feriae, quae respondeat illi diei, in quo facta sit ordinatio." That is to say, it is the ordaining prelate's privilege to determine the nocturn which the newly ordained subdeacon is to say as a penance. But if the bishop simply repeats the words of the pontifical, *nocturnum talis diei,* he is to be understood as meaning the nocturn of the ferial office corresponding to the day of the ordination. For instance, if the ordination took place on a Thursday, on which the feast of an Apostle was celebrated, the nocturn would be the nocturn of the ferial office *feriae quintae.* This nocturn does not include the *Pater, Ave,* or *Credo;* nor does it include the *invitatorium* and *hymn,* or the lessons. It includes only the twelve psalms, with their proper antiphons. In the case submitted, the nocturn would be the first nocturn of the Dominical office for the second Sunday after Easter, as the feast of St. Mark fell on that Sunday this year.

Since the reform of the breviary by Pope Pius X, the first nocturn of the Sunday office has three psalms only; the ferial office has one nocturn only which consists of the nine psalms, or sections of psalms, as appointed for the various days of the week in the new psalter.

X. BETROTHAL AND MARRIAGE UNDER THE NEW LAW.

John and Mary, having made up their minds to get married, draw up a written engagement to that effect, signed by both of them. Informed, however, by Father B., their parish priest, that such a document has no value in the eyes of the Church under the new marriage law, unless signed also by the ordinary of the diocese, or by the parish priest, or at least by two witnesses besides themselves, they resolve to bring the document to Father B. so that he may add his signature. Accordingly they invite Father B. to dine with them and a party of friends at a country house, which John owns at some distance beyond the limits of Father B.'s parish, when the betrothal document is to be given to him to sign it. When the day appointed for the dinner arrived, Father B. was called elsewhere on important business, and he delegated his curate to take his place and to sign the written espousals between John and Mary. This the curate did, with much satisfaction to all concerned. Shortly after, however, John and Mary quarrelled about some matter of little importance, and John, without Mary's consent, even against her earnest protest, broke off his engagement to her, and sought the hand of her sister Margaret in marriage. Margaret lived in another town. She was fully advised about the engagement of her sister Mary to John. But being convinced that things were at an end between her sister and John, and believing that an alliance with John was something to be desired, Margaret agreed to marry him, provided there be no delay. To this John consents, and together they call upon Father W., parish priest of the town where

Margaret lives, to make the necessary arrangements for a speedy marriage. Father W. knows nothing of John's former betrothal to Margaret's sister, but he refuses to marry Margaret and John, because of Margaret's youth. Hereupon Margaret and John framed a document purporting to be the written consent of Margaret's parents to the marriage and they forged Margaret's father's name to the document. Still Father W. refused to marry them. They now threaten that unless Father W. agrees to marry them, John will revoke a bequest of many thousands of dollars which he made to Father W.'s church, and which Father W. was very anxious to receive, as it would liquidate a heavy debt with which the church was burdened. Very much perturbed by this threat, and deceived by John and Margaret as to Margaret's parents, consent to the marriage, moreover ignorant of John's former betrothal to Margaret's sister Mary, Father W. finally consents, and marries Margaret to John in the chapel of a convent, situated within the limits of his parish, but altogether exempt from his jurisdiction, and having a chaplain of its own, who possesses the faculties and jurisdiction granted to *rectores piorum locorum.* This chaplain was absent at the time and knew nothing about the affair, but the superioress of the convent had gladly given her consent, as Margaret was a former pupil of the convent, and socially quite prominent. Are these espousals and this marriage valid or invalid?

Answer.—We will take up, first, the question of the *sponsalia,* which John and Mary contracted in writing and which they signed and afterward presented to the delegated curate, who also signed for and in the name of Father B., the parish priest. These *sponsalia* were null and void *in foro externo ecclesiae,* under the provisions of the new marriage law *"Ne temere,"* which decree on this point is embodied in Canon 1017 of the Code.

(a) It is required for the validity of espousals that they be signed *simultaneously* by the contracting parties and by the ordinary of the diocese or the parish priest, or at least by two witnesses, in the presence of one another. Asked recently *"utrum ad valida inеunda sponsalia partes teneantur subsignare scripturam unico contextu cum parocho seu Ordinario aut cum duobus testibus; an potius sufficiat ut scriptura, ab una parte cum parocho vel cum duobus testibus subsignata, remittatur ad alteram partem quae vicissim cum parocho vel cum duobus testibus subscribat,"* the Congregation of the Council, on July 27, 1908, answered: *"Affirmative ad primam partem, negative ad secundam."* The purpose of this requirement is to prevent fraud and deception, the same as the civil law requires that a last will and testament must be signed by the testator in the presence of the witnesses and by the witnesses in the presence of the testator and of one another. The espousals of John and Mary were not signed by them *unico contextu* with the parish priest; therefore, they were invalid. Recent commentaries, *v. g.,* Noldin, Devine, etc., must be revised to agree with this decision.

(b) The *sponsalia* were invalid because they were not signed by the parish priest himself, but by his curate. The parish priest can not subdelegate his curate to sign the *sponsalia.* Neither can the ordinary of the diocese delegate another to sign for him. In case either the bishop or the parish priest can not or do not sign the *sponsalia,* then two witnesses must sign. The question was proposed to the Congregation of the Council: *"Utrum sponsalia praeterquam coram Ordinario aut parocho, celebrari valeant etiam coram ab alterutro delegato";* and the sacred Congregation answered, March 28, 1908: *"Negative."* The ordinary of the diocese and the parish priest are the *authorized* witnesses of the Church for this purpose, *testis auctorizabilis* or *qualificatus.* The Church is

willing to trust them, and to rely on what they do, but she is not willing to accept the testimony of one whom either of them may delegate. In the absence of either the ordinary or the parish priest, the law requires that *two* witnesses shall sign the *sponsalia,* even though these witnesses be priests and delegated by the ordinary or the parish priest. There is a difference here between the *sponsalia* and the *marriage* under the new law. The ordinary or the parish priest may delegate another priest to assist at a *marriage,* provided it take place within their territory; but they can not delegate validly another priest to sign the written *sponsalia,* even though the document be signed within their territory. S. Congr. Concilii, die 4 Feb. 1908, ad VII.

(c) The *sponsalia* were invalid, because the country house where they were signed was outside the limits of Father B.'s parish. Any ordinary of a diocese and any parish priest may sign the *sponsalia,* both validly and licitly, *provided* they sign within the territory subject to their jurisdiction. To the question: "*Utrum sponsalia celebrari possint dumtaxat coram Ordinario vel parocho domicilii aut menstruae commorationis an etiam coram quolibet Ordinario aut parocho,*" the Congregation of the Council replied, March 28, 1908: "*Posse celebrari coram quolibet Ordinario aut parocho, dummodo intra limites territorii ejusdem Ordinarii vel parochi.*" Therefore, even though Father B. himself had signed the *sponsalia,* under the circumstances they would be invalid, because signed outside the parish limits. These espousals, therefore, being invalid, created no canonical impediments of any kind to the subsequent marriage of John to any relative of Mary. He was canonically free to marry whomsoever he might choose, as far as these *sponsalia* were concerned.

When, therefore, he appeared with Margaret, Mary's sister, be-

fore Father W. and requested to be married, he had a right to do so. The consent of Margaret's parents was not necessary *ad validitatem matrimonii* between Margaret and John. It might have been required *ad liceitatem,* but not *ad validitatem.* Moreover, Father W. was not deceived regarding the purpose of John and Margaret. When the new marriage law says that for the validity of a marriage, the parish priest must assist *"dummodo invitatus et rogatus et neque vi neque metu gravi constrictus, requirat et excipiat contrahensium consensum,"* it means that the mere passive presence of the parish priest is not sufficient, but that he must know what the parties want him for; he must not be deceived as to the purpose for which his presence is required, nor must his presence be secured by force or intimidation. In this case, Father W. is perfectly well aware what is wanted of him. He is deceived as to a point of minor importance, not required for the validity of the marriage, and in no way interfering with Father W.'s full knowledge of what John and Margaret desire to do, and desire him to witness. If while they were conversing with Father W. two witnesses had appeared, and John and Margaret had exchanged mutual vows, the marriage would be invalid, because deception was practised within the meaning of the law. But as things stand, Father W. is *invitatus et rogatus.* But did not John use threats and intimidation when he threatened to revoke his bequest? No, not within the meaning of the law. It was not an unjust threat that John made. He had a perfect right to revoke his bequest. He was doing Father W. and his church no unjust injury in threatening to revoke his bequest. John might have threatened to go to the bishop about the matter, or even to the apostolic delegate. That would not be using unjustifiable intimidation, for it was within John's rights to go to the bishop or the apostolic delegate about the matter, if he choose to do so, and he

would not invade any rights of Father W. in so doing, nor would he do him any unjust injury. Therefore, when Father W. finally made up his mind to witness John's marriage, he was neither *vi aut metu gravi constrictus,* but properly *invitatus et rogatus,* and there only remained for him to require and to receive the mutual consent of the contracting parties, *ut consensum requirat et excipiat contrahentium.*

That Father W. performed the marriage in the chapel of a convent that was removed from his jurisdiction, did not invalidate the marriage. The convent was within the territory of Father W.'s parish, although exempt from his jurisdiction. Now the chaplain of such a convent, if he be altogether exempt from the jurisdiction of the parish priest, has jurisdiction only over such persons as are under his care, and not over such persons as may visit the convent. All persons within the territory of the convent, who are not personally committed to the care of the chaplain, are subject to the jurisdiction of the parish priest of the parish in which such convent is situated. Such is the ruling of the Congregation of the Council. Asked *"num cappellani seu rectores piorum cujusvis generis locorum, a parochiali jurisdictione exemptorum, adsistere valide possint matrimoniis absque parochi vel Ordinarii delegatione,"* the Congregation of the Council answered, February 4, 1908: *"Affirmative pro personis sibi creditis, in loco tamen ubi jurisdictionem exercent, dummodo constet ipsis commissam fuisse plenam potestatem parochialem."* All other persons within the parish limits of Father W.'s parish are subject to Father W.'s jurisdiction, even while within the exempted territory of the *pii loci.*

XI. DELEGATION AND SUBDELEGATION IN MARRIAGE.

Caius, who lives in the town of A., was engaged to a young lady from the town of B. Caius' brother is pastor in A. There were special reasons why the marriage should take place in A., and Caius' brother, the pastor, had intended to perform it, without any assistance or permission from the bride's pastor at B. Shortly before the time appointed for the marriage, however, the pastor of A. met with an accident and was obliged to leave home in order to be treated in a hospital in a neighboring city. As it was impossible for him to perform the marriage he asked a friend of his, who is pastor in C., to take his place and do it for him. This the pastor of C. agreed to do, but at the last moment he was called away by a death in his own family, and in his hurry and excitement he commissioned his assistant to go to the town of A. and to marry the young people. This the assistant did without further formality, as there was no time to be lost. Now I desire to know whether the pastor of C. could, under the circumstances, subdelegate his assistant priest to perform this marriage in the town of A., and whether the permission of the bride's pastor at B. was required in order that the pastor at A. or his delegate might assist licitly at this marriage?

Answer.—This marriage was performed in the town of A. Therefore the parish priest of A. or else the bishop of the diocese was the only person who could witness this marriage *validly*. In their absence they must designate some other priest, *certus et determinatus*, says the new law, who shall witness the marriage as their delegate. The *parochus loci* where the marriage takes place is the proper person to witness validly a marriage. It makes no difference in

relation to the *validity* of a marriage whether the contracting parties have a domicile or not in the parish. This marriage took place in the town of A. Therefore, the pastor of A. was the competent person to assist validly at it, or to delegate another priest to do so for him. As a matter of fact, the bridegroom lived in A. Therefore, as far as he was concerned, the pastor of A. could marry him not only validly but *licitly* also. But the bride did not live in the town of A., but in the town of B., and the new marriage law says that the pastor of the bride, in the first place, is the proper person to assist licitly at her marriage. *"In quolibet autem casu pro regula habeatur, ut matrimonium coram sponsae parocho celebretur."* Canon 1097. When there is a *justa causa,* however, the law does not require the bride to be married by her own pastor, nor does it in that case require that she get his permission to be married licitly elsewhere. When there is no serious reason whatever why a girl should not be married in her own parish and by her own pastor, then the law requires that she be married there, to make her marriage altogether licit. But where there is a serious reason why she should be married outside of her own parish and by some one else than her parish priest, all the commentators on the new marriage law agree that the bride is free to be married by the pastor of the bridegroom. Thus Fr. Noldin, S.J., says:

"Ex verbis quidem decreti parocho sponsae primo loco competit jus assistendi matrimonio; practice tamen in hac re non erit urgendum discrimen inter parochum sponsae et parochum sponsi. Cum enim non requiratur nisi justa causa, ut parochus sponsi licite assistat, quaevis autem rationabilis causa utilitatis vel convenientiae vel consuetudinis censeatur justa; vix unquam deerit justa causa, ubi nupturientes petunt, ut coram parocho sponsi contrahere possint." n. 10, a.

As there were serious reasons for this marriage taking place in A., where the bridegroom lived, the bride was at liberty to be married there, without asking leave of her own pastor. And let us add, in passing, in this case the bride's pastor could make no claim to the marriage fee. Therefore, the pastor of A., being himself prevented from witnessing this marriage, had the right, *quoad liceitatem,* to delegate some other priest to take his place and to act for him. Validly and licitly, therefore, the pastor of A. delegated the pastor of C. to perform this marriage for him, within the limits of the parish of A., without procuring any authorization or permission from the parish priest of B., who was the bride's pastor.

But now it happened that the pastor of C. could not *personally* execute the delegation which he received from A., and so he commissioned his curate to execute it for him. The question now arises, was C. competent, in this particular case, to subdelegate his assistant? He himself was delegated personally by A. to assist at this marriage. Did the delegated faculty which he received include expressly or by implication the further faculty to subdelegate another, in case he could not execute the delegation himself? In general, a pastor who delegates another priest to witness a marriage in his stead may also grant such other priest the power to subdelegate another, provided always that it be some *certain* and *determined* priest whom he subdelegates.

"Sacerdoti delegato concedi potest facultas tum specialis tum generalis subdelegandi: ejusmodi enim delegatio non censetur indeterminata, dummodo delegatus sibi non substituat (non subdelegct) nisi personam determinatam." Noldin, 13.

The difficulty here is to determine whether in fact the pastor of A., in delegating the pastor of C. to assist at Caius' marriage, granted him also the further power of subdelegating some one else.

If A. did in fact grant this further power to C., then C.'s curate was validly subdelegated and the marriage he performed in A.'s parish was valid. But if A. did not grant C. the power of subdelegating another, then, of course, C.'s curate's subdelegation was void and the marriage he performed was invalid. It is a question of *fact* and not of *law*. May it be taken for granted that C. in this case received from A. the power to subdelegate? We do not think so. The power to subdelegate may be granted either by word of mouth or in writing, expressly or tacitly, or by sign or gesture, personally or through a third person, for a particular case or for all marriages. But an interpretative delegation is, in fact, no delegation. Had A. thought about it at the time, he very likely would have granted C. the power to substitute his curate in case he could not go himself. But, as a matter of fact, he did not, because he did not think about it. There is question here of something that must be capable of proof *in foro externo*. It is not lawful to suppose or to take for granted certain powers, but their grant must be capable of proof. Otherwise the Sacraments would be exposed to the danger of being null and void. It is not lawful to suppose that one has been granted jurisdiction to hear confessions, except in a case of necessity, but one must make sure that jurisdiction has actually been given. The Code does not lay down any rules for subdelegating. Therefore, the question of subdelegating must be governed by the rules of the common law of the Church. According to the rules of the Canon Law a delegate may subdelegate:

1. If he be delegated *ad universalitatem causarum.*
2. If he received special authorization to subdelegate.

As far as we are able to judge, in the present case there was no special authorization granted to the pastor of C. to subdelegate his

curate. Therefore, as soon as C. foresaw that it would be impossible for him to assist at Caius' marriage, he should have communicated either with the pastor of A. or with A.'s bishop, and requested the faculty to subdelegate his curate, or else have either of them delegate him. Caius and his bride should be made to renew their consent before the pastor of A. or B. or before some one properly delegated by either of them and before two witnesses. If this is impossible, apply for a *sanatio in radice*.

XII. THE PAPAL BLESSING *IN ARTICULO MORTIS*

Discussing recently, with some fellow priests, the question of the papal benediction *in articulo mortis,* there seemed to be a considerable difference of opinion as to how often it might be given to the same sick person during the progress of the same sickness. Some of the clergy thought that it might be given or repeated whenever Extreme Unction was given or repeated. Others thought that if it were given to a sick person while in mortal sin it ought to be repeated when such person made a good confession. Others seemed to think that if the sickness continued for some time and the sick person had the misfortune to fall, from time to time, into mortal sin, the blessing ought to be repeated each time that the sick person received absolution for mortal sin. Is there any certainty in this matter, or may a priest follow whatever seems good and reasonable to him?

Answer.—A priest may not follow whatever seems good to him in this matter, as the Sacred Congregation of Indulgences has, at various times, answered all the above questions. Let us take them up, one after another. First, may the papal blessing be given more than once during the same sickness? At least, may it be repeated whenever Extreme Unction may be repeated during a protracted sickness? No, the papal blessing, *in articulo mortis,* may not be given more than once during the same sickness, even though it might be allowed to repeat the administration of the Sacrament of Extreme Unction. St. Alphonsus and the theologians generally permit the repetition of Extreme Unction during the same sickness

about once a month, because if the sick person continues to live for a month or more after having been anointed, the original crisis or danger of death, or *periculum mortis,* is supposed to have passed and a new danger to have supervened, which renders lawful a new administration of Extreme Unction. But the same can not be said for the repetition of the papal blessing, because the Congregation of Indulgences forbids it. Asked whether the last blessing might be given *"bis aut amplius in eodem morbo, qui insperate protrahitur, etiamsi non convaluerit aegrotus,"* the Sacred Congregation replied, September 23, 1775: *"Semel in eodem statu morbi."* Again, when the Sacred Congregation was approached with the doubt: *"Utrum benedictio apostolica pluries impertiri possit infirmis, novo mortis periculo redeunte,"* it replied, on September 24, 1838: *"Negative, eadem permanente infirmitate etsi diuturna; affirmative, si infirmus convaluerit, ac deinde quacunque de causa in novum mortis periculum redeat."* The reason why it is not permitted to repeat the blessing during the same sickness is because such repetition is useless. The plenary indulgence granted by the Pope to the dying can be gained only once and that only at the *instant* of death. If the sickness continues, the indulgence also continues, to be gained *at the moment of death.* If the sick person does not die, neither does he gain the indulgence. If the sick person recovers and later on contracts a new sickness, he must receive a new blessing, because the former one passed with the passing of the sickness, for which alone it was granted. The second question to be answered is this: If the last blessing was received in the state of mortal sin, ought it to be repeated when the sick person is absolved from mortal sin? Again the answer is no. This was the answer made to this question by the Congregation of Indulgences on June 20, 1836. As the plenary indulgence is not gained when it is given, but only at the moment of

death, it makes no difference *quoad hoc,* whether the sick person be in the state of grace or in mortal sin at the time the blessing is given. The indulgence is gained at the instant of death, at the moment when the soul leaves the body, and if at that moment the dying person is in the state of grace and has complied with the other conditions for gaining the indulgence he gains it, even though he was in mortal sin at the time the priest gave him the blessing. Therefore, Fr. Schneider, S.J., in his work, "Rescripta Authentica," p. 701, after reminding his readers that the blessing can be given only once during the same sickness adds: "*Haec enim omnia non impediunt effectum, si aegrotus in vero mortis articulo dispositus est; pro illo momento videlicet datur indulgentia.*"

For the reasons just given it follows that it is not lawful to repeat the last blessing, even though the sick person, after having received it in the state of grace, should afterward fall into mortal sin. As was just said, the plenary indulgence granted by the blessing is intended only for the *moment* of death. If the dying person, who has received the blessing while in the state of grace and then has had the misfortune to fall into mortal sin, is in the state of grace at the moment of death, that is all that the sovereign pontiff requires for the gaining of the indulgence. And for this reason the Congregation of Indulgences, on June 20, 1836, replied that it was not necessary, and therefore not lawful, to repeat the papal blessing *in articulo mortis,* even though the dying person should fall into mortal sin, after having received it. And this was the third question to be answered.

For the further illustration of this matter it might be well to recall to mind that all persons who are in danger of death, and who are capable of receiving sacramental absolution, may and should receive this papal blessing. Therefore, first, even those who are

unconscious and who, even through their own fault have not received the last Sacraments, ought to receive the last blessing; second, also children who have never been to Confession or holy Communion, provided only they are old enough and capable of committing sin; third, all those who are condemned to death for crime, provided they repent; fourth, soldiers, before going into battle; fifth, and all persons who are in danger of death, whether through sickness or from some external cause.

The conditions for gaining this plenary indulgence are:

First, the same conditions that are required in order to gain any indulgence, that is to say, the person must be in the state of grace when the indulgence is gained and must have the intention of gaining the indulgence.

Second, he must be fully resigned to the will of God in dying.

Third, he must pronounce the holy name of Jesus with his lips, if possible, and if he be not able to speak he must at least invoke the holy name of Jesus in his heart.

Special attention is called to this last condition of pronouncing the most holy name of Jesus. It is required by the Congregation of Indulgences in order to gain the plenary indulgence *in articulo mortis*. September 22, 1892. It is something that is very easily overlooked, and, therefore, we direct especial attention to it.

Finally, it is customary to give this blessing after Confession, Viaticum and Extreme Unction. It is not necessary to follow this order, but it is generally followed. In which case it is necessary to repeat the *confiteor* three times, *i. e.*, once before giving Viaticum, a second time before Extreme Unction, and the third time before giving the last blessing.

In a case of extreme need, where no time is to be lost, the *confiteor* is omitted and the priest begins the blessing at the words *"Dominus*

noster Iesus Christus," etc. If there were danger even in the delay required for this formula, then the priest ought to begin with the words: *"Ego facultate mihi ab apostolica sede tributa, indulgentiam plenariam et remissionem omnium peccatorum tibi concedo, in nomine Patris et Filii et Spiritus sancti, Amen."* If there be no time even for this much of the prescribed formula, some theologians are of the opinion that the formula *"Benedicat te, Omnipotens Deus, Pater et Filius et Spiritus sanctus, Amen"* is sufficient for the valid imparting of the apostolic blessing and the plenary indulgence. (Cf. Schüch, O. S. B., "Pastoral Theologie," p. 823.)

XIII. SAYING MASS WITHOUT WINE

A Catholic man died recently in an outmission belonging to the parish of A. The pastor of A. was absent from home on the annual retreat of the clergy of the diocese. He had made arrangements with the assistant of a neighboring parish, belonging to a neighboring diocese, to look after his parish as well as this outmission during his absence, in the matter of sick calls and funerals, if there should be any, which was thought unlikely. This assistant was a young priest, just ordained, and unfamiliar with the conditions at A., and, especially, at the outmission. As this Catholic man died suddenly, in fact had been killed accidentally, the assistant priest was not notified until almost the last moment. The family of the deceased wanted a Requiem High Mass, and the necessary arrangements were made with the choir of the parish of A., etc., The church was crowded with Catholics and non-Catholics, when the young priest arrived to say the Mass and bless the corpse. But he had forgotten to bring along any Mass wine, and there was none to be had in the neighborhood for several miles around. To send home for some was out of the question. At the same time the young priest was afraid to omit the Mass. In his excitement he said the Mass, consecrating only one species, that is, the bread. Now it is asked:

1st. Is it ever allowed to consecrate one species alone?

2d. Would the Mass, said with one species, *i. e.*, with bread alone, or with wine alone, be a true sacrifice or a real Mass?

3d. Might a priest retain the stipend, if he said Mass only with one species?

Answer.—We are not concerned here with the *subjective* question of the young priest's guilt or innocence in saying Mass with bread alone. That question will depend on the state of the young man's conscience at the time, as to what could be done lawfully, under the circumstances. If, in his excitement, he thought it was best to proceed as he did, in order to avoid scandal and harsh criticism, and having no means at hand, as for instance, a manual of Moral Theology, to advise him that his conduct was wrong, he may be acquitted of mortal sin. It is difficult to conceive, however, how any one, having completed an ordinary course of theology, and not have been guilty of grave criminal negligence in his studies during that time, could doubt for a moment that it is never allowed to say Mass with one species alone. However, this question does not concern us at present.

Our concern at present is with the objective question:

1st. Does the Church ever allow a priest to say Mass with one species alone?

Would it be lawful to say Mass with bread alone, or with wine alone, for any purpose whatever, *v. g.*, to administer Viaticum? No, it is *never allowed,* under any circumstances, to say Mass with one species. St. Thomas (III. pars., q. 83, a. 6) calls it an *"immane sacrilegium,"* and the Church, in the Corpus Jur. Can., pronounces excommunication against any priest who would dare to interrupt the Mass after the consecration of the bread, *"si quis haec* (viz., *ne sacerdos cum coeperit imperfecta officia praesumat omnino relinquere*) *temerarie praesumpserit, excommunicationis sententiam sustinebit."* (Decree Gratian, p. 2, c. 7, q. 1, cap.: Nihil.) The Church is so strict in this matter, that should a priest, after

the consecration of the bread, be stricken with a fatal malady and be unable to proceed with the consecration of the wine, the Church not only permits, but commands, even an excommunicated priest, yes, even a *vitandus,* if no other be at hand, to consecrate the wine and complete the Mass, rather than allow or permit the Mass to end with the consecration of only one species. St. Alphonsus maintains that the obligation to consecrate both species in the Mass, both the bread and the wine, is of strict divine command, from which neither the Pope nor the Church has any authority to dispense.

Again, in the instructions on the Mass, as contained in the Roman missal, we read:

"Si materia quae esset apponenda, ratione defectus vel panis vel vini, non posset ullo modo haberi; si id sit ante consecrationem Corporis, ulterius procedi non debet; si post consecrationem Corporis aut etiam vini, deprehenditur defectus alterius speciei, altera jam consecrata: tunc si nullo modo haberi possit, procedendum erit et Missa absolvenda, ita tamen ut praetermittantur verba et signa, quae pertinent ad speciem deficientem. Quodsi expectando aliquandiu haberi possit, expectandum erit, ne sacrificium remaneat imperfectum." (De defect. occur. circa Missam, n. iv, 8.)

If this young priest was not aware that there was no wine until after the consecration of the bread, and there was no wine to be had, then he would be permitted to continue the Mass to the end, omitting only those words and signs that refer to the consecrated wine. But if at any time *before* the consecration of the bread he perceived the absence of the wine, he should have discontinued the Mass immediately. Not even in order to administer Viaticum to himself, or to another, would, or could, the Church allow him to consecrate one species alone.

"Illud certum est, nunquam licere, alteram speciem sine altera consecrare; Christus enim potestatem dedit faciendi quod ipse fecit, et ita jussit fieri." (Ballerini-Palmieri, tr. 10, 230.)

2d. Would the Mass celebrated with one species be a true Mass and a real sacrifice?

Modern theologians maintain that it would not. Thus, Father Lehmkuhl holds that it is dogmatically settled that the consecration of both species is required for the essence or substance of the Mass as a sacrifice. Without this double consecration, namely of the bread and of the wine, there is no adequate or sufficient showing forth or representation of the sacrifice of Christ on the Cross, as instituted and ordained and willed by Jesus Christ.

Nullo modo probabile est, alterutram consecrationem per se solam sufficere ad essentiam sacrificii Missae. Licet enim sufficiat, ut potuerit assumi pro sacrifico, reipsa tamen non ita assumpta est a Christo Domino. Nam realis cruentae mortis representatio non satis habetur secundum ea quae Christus voluit, nisi utriusque seperatae speciei consecratio fiat. Haec vero realis representatio Missae essentialis est" (Lehmkuhl, I., n. 165).

According to Cardinal DeLugo, the Mass is essentially, in its institution by Christ, a commemorative sacrifice, representing the bloody sacrifice of Christ on the Cross. Now it represents the death of Christ, in as far as, by virtue of the words of consecration, the Body and the Blood of Christ are separated one from the other. If, therefore, a priest intended from the beginning to consecrate only one species, such an one could *not* be considered as having the intention of doing what Christ ordained and instituted, and consequently he would not consecrate at all. Other theologians, however, deny this.

Ballerini thinks that in the consecration of the bread alone, the

death of Christ is shown forth in a partial manner: *"Nec improbabile prorsus est, repraesentationem mortis Christi aliquo modo ibi quoque haberi, eo quod vi verborum ex intentione celebrantis, ibi ponatur solum corpus, non sanguis"* (Ballerini, tr. 10, 230).

3d. May a priest retain the stipend for saying Mass in which he consecrates only the bread?

Berardi, *Praxis Confessariorum,* 1182, puts a question *de sacerdote, qui bona fide vino inepto in celebratione Missae usus fuit: an, scilicet, aliam Missam propter acceptam eleemosynam celebrare teneatur?* He quotes the answer, taken from *"L'Avvisatore Eccl.* p. 168:

"Pro Missis bona fide celebratis ante ortum dubium, videtur ad nihil teneri, quia licet fuerit laesa justitia commutativa, defuit tamen culpa theologica. Potest tamen petere condonationem (intellige ad majorem securitatem) a sancta sede." If the young assistant acted in good faith he may retain the stipend. Ballerini says that he may not, because he cannot liquidate a debt that is quite certain by a doubtful payment.

XIV. A MARRIAGE CASE RECENTLY DECIDED BY ROME

The following is a synopsis of a marriage case recently decided by the tribunal of the Rota:

In 1879, one Werner, a German Lutheran, contracted marriage with Eliza, a member of the same sect, before a Lutheran minister. Before the marriage Werner had heard reports reflecting on Eliza, but they did not deter him from marrying her, because, as he said to his relatives, if the reports should prove true, or if the girl proved unfaithful after marriage, he would simply get a divorce. Accordingly, the marriage took place, without the wife ever learning of the objections made against her. After the birth of several children, the relations between Werner and Eliza became so strained that the wife procured a divorce in 1884. Two years later Werner married again, but his second wife died in 1895, leaving three children by the marriage.

After the death of this second woman, Werner became acquainted with Antonia, a Catholic noblewoman, who, in her desire to convert Werner and his children to the Catholic faith, consented to marry him, and accordingly applied to her bishop for a certificate *de statu libero* for Werner, which would declare Werner's marriage to Eliza invalid, and that Werner was free to marry Antonia. But the bishop refused the certificate *de statu libero,* on account of the *impedimentum ligaminis,* as Werner's first wife Eliza was still living. To remove this obstacle, Antonia, the Catholic woman, brought a case in the bishop's court, for the declaration of the invalidity of Werner's first marriage, on the grounds that it had been contracted with a *conditio turpis,* namely, the intention, if

certain things proved true, of procuring a divorce, and that this *conditio turpis* destroyed the substance of the marriage. The bishop decided against Antonia, who thereupon appealed the case to Rome.

The Facts of the Case.—Upon examination, the tribunal of the Rota, at Rome, found the facts of the case to be these: Werner had the intention of marrying his first wife Eliza, according to the rites of the Lutheran Church, which permits divorce for adultery, but that this dissolubility was not put as a condition on the occasion of the marriage. When adverse criticism was made against Eliza before the marriage, Werner states that: "As no facts were given, I believed the reports to be unfounded and mere idle gossip. For the moment I did not think that it would come to this, and my usual reply was that I wanted to be let alone, that I loved the girl and that I was making a good marriage." Some days before the marriage Werner replied to some who still endeavored to dissuade him: "It makes no difference to me, even if the stories about the girl should prove to be true, or if she should go wrong after our marriage, I would not kill myself for that; I would simply get a divorce."

From these and similar expressions of Werner, the tribunal of Rota holds that Werner's predominating intention was to contract a valid marriage, although he held the erroneous opinion that marriage is dissoluble for adultery. When examined by the bishop's curia, Werner testified:

"In marrying Eliza according to the rites of the Evangelical Church, I wished to contract a Christian marriage, according to the belief of my sect, and I wished to assume the duties of a Christian marriage. I believed that Christian marriage could be dissolved for certain causes and that after its dissolution I would be free to marry again. During the marriage ceremony, when I

was standing before the altar, I was decided to fulfil my duties, but I also thought that, if the stories about my wife proved to be true, I would get a divorce."

From these facts of the case it is evident that Werner wished to contract a valid marriage, although he held the erroneous opinion that marriage was dissoluble for adultery on the wife's part; furthermore, that this intention of his was not put as a pact or condition, because he did not think it necessary, first, because he did not believe the reports about his wife; and, secondly, because if the reports should prove to be true, he had at hand a remedy for the dissolution of the marriage, independently of any prenuptial agreement, namely, divorce, sanctioned by his sect, as well, as by the law of the country.

THE LAW IN THE CASE.—According to Catholic theology, not *any* intention of dissolving a marriage is sufficient to invalidate a marriage, but only such intention as has been put forward *as a pact or condition,* at the celebration of the marriage. When asked as to *whether a marriage is valid when contracted between a Catholic and a schismatic with the intention of dissolving the marriage,* the Holy Office replied, October 20, 1680: *"Those marriages are null when these things are put forward as a pact or when the marriages are contracted with this condition, otherwise the marriages are valid."* If the prime intention of the parties to the contract was to contract a *dissoluble* marriage, such intention would destroy the substance of the marriage, since there is no such thing possible among Christians as a dissoluble marriage, Christian marriage being essentially indissoluble. But where the prime intention is to contract a true and valid marriage, then, though the parties believe that marriage is dissoluble for certain causes, still such secondary intention or persuasion is absorbed by the prime intention of contracting

a true Christian marriage and it does not destroy the substance of the contract. This doctrine is set forth by Pope Benedict XIV, synodo dioecesana, l. 13, and is confirmed by Pius VI in a letter to the Archbishop of Prague, July 2, 1789:

"Nor is there lacking an intimate reason why the intention of contracting according to the ideas of a sect or of a law which permits the dissolution of marriage for these causes does not militate against its validity, provided this intention is not put forth as a pact; for, from the very fact that non-Catholics, through error, think that the dissolution of marriage for these causes is not repugnant to the law of Christ; hence, it comes about that in their minds, by reason of this false opinion, the intention of contracting according to such laws, or to the principles of such a sect, by no means excludes the primary intention of contracting according to the divine law confirmed by Christ. Hence, this will remain at the act of contracting, and from it flows and is determined the consent which is given to the act. And consent given according to the law of Christ is suitable and sufficient for the validity of marriage, unless there be some other canonical impediment."

Again, the making of a pact or condition is not presumed *in foro externo,* but must be proved. Benedict XIV, *loc. cit.,* says:

"If the express condition that the marriage is to be dissolved in case of adultery has not been made, although the contracting parties may be in error with regard to the dissolution of marriage by adultery; still the presumption remains that when they willed to contract marriage as it was instituted by Christ, they willed to contract perpetual and indissoluble marriage, even should adultery take place, for, as we have said, the general will of contracting marriage as instituted by Christ prevails, and in a manner, absorbs

that private error; so that the marriage thus contracted remains firm and valid."

But, it may be asked, what if the parties, knowing the law permitting the dissolution of marriage for adultery, have contracted marriage with this positive intention that in the case of the infidelity of one of them the marriage can be dissolved.

In such case, of course, the marriage would be null, for this positive intention would destroy the marriage on account of the defect of the matrimonial mind to its proper object, *i. e.*, to an indissoluble marriage. But the auditors of the Rota decided that this doctrine cannot be applied to the present case, because Werner, ignoring the rumors about Eliza, and having no doubt about her future fidelity, had no reason for limiting his consent at the marriage. Neither did he manifest any such intention to the girl, either before or at the marriage, and yet the condition must be put forth as a pact with the knowledge and consent of the other party, because the contract is the resultant of the will of the two persons for the same object.

From the facts and the law the Rota concludes that the marriage of Werner to Eliza was a valid marriage, and that he is not free to marry Antonia.

XV. A ROMAN CATHOLIC MARRIES AN ORIENTAL SCHISMATIC

Titius, a Catholic belonging to the Roman rite, marries Bertha, who belongs to an Oriental schismatic rite, before a schismatic priest.

1. Is the marriage valid?

2. Is Titius excommunicated?

3. What about the marriage of two Orientals before a non-Catholic minister?

Answer.—1. The marriage is invalid, *propter impedimentum dirimens non servatae formae jure canonico statutae.* The new marriage law, as contained in the Code of Canon Law binds all Catholics of the Latin rite: (a) When contracting marriage between themselves; (b) when contracting with non-Catholics, either baptized or unbaptized. The Holy See has revoked the former exception in favor of Germany and Hungary; (c) when contracting with Catholics of an Oriental rite. Catholics belonging to the Oriental rites are not bound by the provisions of the Code if they marry persons belonging to an Oriental rite. It is only when they contract marriage with Latin Catholics that they are indirectly bound by the new law, because the Latin Catholic is bound by it. The Congregation of the Council was asked in reference to the "Ne Temere":

Utrum validum sit matrimonium contractum a Catholico ritus Latini cum Catholico ritus Orientalis, non servata forma a decreto "Ne Temere" statuta?

The answer given on March 28, 1908, was: *Negative.*

In the bull *Allate sunt* of Pope Benedict XIV, it is expressly stated that the Orientals are not bound by new pontifical decrees, except in the following three cases: (a) When dogmas of faith are defined; (b) when the decree mentions expressly the Orientals; (c) when the Orientals are implicitly included in a pontifical decree, as they are in the bull of Leo X, in the V. Council of the Lateran, forbidding an appeal from the Pope to a future general council.

Canon 1 of the Code states that Orientals are not bound to the laws of the Code except in matters which of their nature bind all Catholics. In matters where they necessarily come into contact with the disciplinary laws of the Latin Rite, for instance in a marriage between an Oriental and a Catholic of the Latin Rite, the law specially provides for these cases. Thus Canon 1099, sec. 1, n. 3, rules that Orientals are bound to the form of marriage of the Code if they contract with Catholics of the Latin Rite bound to this form. Under the law of the Council of Trent on the form of marriage the principle obtained that if one was free from that law, he communicated that freedom to the other. The Code does not admit this.

The Catholic of the Latin rite, being incompetent to contract marriage validly, except he contract before a Catholic priest having jurisdiction over the locality where the marriage takes place, his marriage to a Catholic of an Oriental rite will be null and void, unless it be contracted in that way. A fortiori, if the Oriental Catholic belong to a schismatic rite, as in the present case. As Titius was not married in the presence of the parish priest of the district, but by a schismatic priest, it is very evident that his marriage is invalid.

2. Is Titius excommunicated?

It is not certain whether Titius contracted excommunication because the Code seems to inflict the censure only in case they go

through the marriage ceremony both before the Catholic priest and the non-Catholic minister. See discussion on this point in Case I, page 11.

3. It is necessary for the priests of the Latin Rite to know whether Catholics of an Oriental Rite can validly contract marriage before a non-Catholic minister or a civil magistrate when they marry a Catholic of an Oriental Rite, or an Oriental schismatic, or a person belonging to some non-Catholic sect. In the United States the Orientals are scattered all over the country and the Catholic Orientals have very few priests of the Oriental Church to take care of their spiritual affairs wherefore they frequently are obliged to receive the Sacraments in the churches of the Latin Rite. Besides, as far as Confession and Holy Communion is concerned, they are free to receive these Sacraments in the Latin Rite though they have a church and a priest of their own Rite. In Confession the question concerning the validity of their marriage may be put before the priest of the Latin Rite.

The Catholics of the various Oriental Rites are not allowed to marry outside the Catholic Church but if they do their marriages are not, as a general rule, invalid, if there is question of marriages between a Catholic of an Oriental Rite and a heretic or schismatic (Cf. S. Congregation of the Propaganda, January 11, 1817; Collectanea de Propaganda Fide, vol. I, no. 716). In the various decrees which deal with this question the Holy See has always upheld the principles that the Orientals are not bound by the disciplinary law of the Church of the Latin Rite. Even in those cases in which the "Tametsi" decree of the Council of Trent on the form of marriage had been promulgated in some places of the Orient, the Holy See did not consider the Orientals bound by that law, and applied it only to Catholics of the Latin Rite living in those places and

marrying between themselves, that is to say, when both parties belonged to the Latin Rite.

An exception has been made to the general rule that the Orientals are not bound under pain of invalidity to the Catholic form of marriage, in reference to the Greek-Ruthenian Rite in the European Province of Galicia, and for the members of that Rite scattered through Canada, the United States, and South America. For the Province of Galicia by decree of the S. Congregation of the Propaganda, May 5, 1911, for the United States by decree of August 17, 1914, for Canada by decree of August 18, 1913, for South America by decree of March 27, 1917. A similar rule was made for the Maronite Rite by their Synod of Mount Lebanon held in the year 1736, and specially approved by the Holy See. The marriages of the Greek-Ruthenians in the places mentioned, and of the Maronites, are not valid if contracted outside the Church. As to the various other Oriental Rites the general rule obtains that their marriages outside the Church are illicit but valid.

XVI. COMMUNICATION WITH HERETICS.

Case: In a country town, away from large centres of population, the good feeling existing between Catholics and those outside the fold often goes beyond the bounds of friendly social intercourse and invades the sphere of religion. The pastor has an application from a non-Catholic who is anxious to act as his organist, without remuneration. Other non-Catholics express their desire to join the choir and to take part in the wonderful processions of May and *Corpus Christi.* In fact, one man, edified by the conduct and language of the Catholic Holy Name members, applied for admission into the Society. On the other hand, their Catholic neighbors are at times invited to accept the honor of being sponsors at a Protestant baptism, to hear noted preachers and revivalists who occasionally visit the town, and even to sing in the non-Catholic Church choir.

Questions: 1. What are the various kinds of communication with heretics?
2. What communication with heretics is forbidden?
3. What should be the pastor's attitude in the various cases?

Solution: 1. There is civil, as distinguished from religious, communication with heretics. The former, called for by political, business and social reasons, is forbidden by the natural law only in case it constitutes a real danger to either faith or morals.

Communication in religious service is actual participation in a sacred function and consequently differs from coöperation, which merely implies the supplying of a means necessary or useful for

divine worship. Active communication is usually understood to cover the case of a Catholic taking part in a heretical rite, while the term, "passive" is applied to the case of a heretic being allowed to have a share in public Catholic worship. Still it may be well to note that in Canon 1258, the Code, referring exclusively to Catholics, speaks of active participation in non-Catholic rites as opposed to passive or material presence at them. We take the terms here in the former sense.

A last distinction, the most important of all, is that between formal and material communication. Formal communication means taking part in the sacred side of a religious function. I think this is what is so sweepingly forbidden by the Code, Canon 1258: "It is not allowed for the faithful in any way actively to assist at, or take part in, non-Catholic sacred functions." It can arise either from the intention of the participant to make himself one with the non-Catholic worshippers or from the very nature of the share he takes in their heretical service. Material communication, on the other hand, is the taking part in a rite which is sacred but without any share in its purely religious character.

We are now in a position to state the principles governing this important matter.

II. 1. Active formal religious communication is forbidden by the natural law, because it is really a denial of the true faith, and a profession of one that is false.

2. Active material public religious communication is, as a rule, forbidden by the natural law, because it also, to a degree, apparently implies the acceptance of what is false; it endangers the faith of the Catholic participant and may be a source of scandal to others of the faithful. That is why it is forbidden by ecclesiastical law too. However, in cases where there is no danger of violating

the natural law and there is no Church prohibition, for a grave reason, to be passed on, in a doubt, by the Bishop, it may be tolerated. In general, to decide when material communication may be tolerated we must be able to answer in the negative the following questions: "Is there danger of perversion?" "Is there danger of scandal?" "Is there an ecclesiastical prohibition against it?" "Is there real, though only implicit, denial of religious truth?"

3. Passive communication is also frowned upon as a rule, because, if acquiesced in too readily, it would seem to be a sign of religious unity between those who profess the truth and heretics. Here naturally, the ban is not so strict, as the danger is less than in cases of active communication and the advantages to be derived by heretics from contact with the church's ceremonies are far from negligible.

A remark is in place here. In deciding the lawfulness of material communication, account must be taken of circumstances, custom and public opinion. What is licit at one time in one place may be illicit in other places, at other times. In fact, under certain conditions, instances of communication unjustifiable on principle may be allowed to pass unchallenged, if thereby greater evils are averted. This is in conformity with a declaration of the Holy Office, April 26, 1894.

III. The pastor may engage the non-Catholic as his organist, if no scandal is to be feared from such action. (Holy Office, Feb. 23, 1820.) It need scarcely be said that a Catholic of equal or slightly inferior ability should be given the preference over his Protestant competitor. He should not admit non-Catholics to the choir and have them sing at liturgical functions (Holy Office, May 1, 1889). It was decreed by the same Holy Office, Nov. 20, 1850, that heretics should not be allowed to carry tapers or lamps in

Catholic processions. They should not be encouraged to take part in those solemn ceremonies; if, of their own accord, they fall in with the ranks of Catholics doing honor to Our Lord, there is no need to exclude them. Canon 693 par. I makes the reception of non-Catholics into a Church society invalid. After long and bitter disputes among theologians as to the lawfulness of a Catholic acting as sponsor to a Protestant child baptized by a Protestant minister, the Holy Office, May 10, 1770, decided that it was unlawful to act in such capacity either personally or by proxy. As a rule, Catholics should keep away from non-Catholic sermons. It would not be a grievous sin for a Catholic, through curiosity, to listen to such a sermon as long as there was no danger of perversion or of scandal and no ecclesiastical prohibition. If there was no breach of either natural or Church law, under certain circumstances, a man might be allowed to listen to them for the purpose of refutation. The Catholic sense instinctively knows the danger of attendance at such discourses. Lastly, a Catholic should not be allowed to sing in a Protestant Church choir (S.C. de Prop. Fide, June 19, 1889). The influence of the service, the hearing of heretical sermons, the very atmosphere are baneful for a Catholic soul. There is real danger of indifferentism and of perversion, if the active communication were not in itself sinful.

The pastor then should try to instill into the members of his flock a love of the faith and an uncompromising loyalty to the Church. His non-Catholic neighbors, kindly disposed as they are, may be led to see the difference between error and truth and to embrace the latter under the influence of God's grace and of the example of unswerving fidelity shown by their Catholic friends.

XVII. CO-OPERANTES AD FURTUM

Three men agreed to drive out to a certain farm on which no one was living to pluck some of the fine fruit they had seen there. Upon their arrival at the farm they find that the fruit has already been plucked and stored away in the vacant house, and the house locked. A is anxious to get at the fruit and so he proceeds to remove one of the window-panes to enable him to get in. B helps him, but C's conscience becomes uneasy, and so he protests and tries to dissuade the other two, but they persist in removing the fruit. When they have it and are about to start for home, B, too, becomes uneasy and turns his share over to A. C had demurred and had taken no part in the transaction. But now they are getting ready to return. A and B proceed to load the fruit into the wagon. If C would refuse to haul it in, A would most likely back down and leave it; at least as far as C knows, A could not get away with the fruit. But C is a good-hearted fellow, and out of human respect allows the fruit to be loaded onto his wagon, and helps cover and conceal it on the way in.

What about restitution?

Answer.—This is a case of co-operating in a theft. These three men agree to steal the fruit. They agree to act jointly in injuring their neighbor. In order to determine whether they are bound to make restitution, we must consider whether their action is (*a*) unjust; (*b*) the real and efficacious cause of the damage done to their neighbor; (*c*) sinful; or, as the theologians say, theologically culpable. These three conditions must be verified before anyone can be held responsible in conscience for an injury done to another. *Actio dam-*

nificans debet esse vere, efficaciter et formaliter injusta. When these three men agreed to jointly steal the fruit they became equally responsible for the injury they agreed to do their neighbor, because they agreed to become the *real, efficacious* and *sinful* cause of an unjust action, causing injury to their neighbor. The three are equally guilty, because they conspire mutually to do the injury, and each one renders himself liable for the *whole* damage that the three of them do, provided the other two refuse to repair their share. *Totum damnum infert, qui* COMMUNI CONSPIRATIONE *cum aliis ad damnum inferendum concurrit.* Had these three men, therefore, proceeded without more ado, to steal the fruit, each one would be bound to make restitution of a third part of the fruit, provided all three of them were willing to make restitution; but each one is liable in conscience for the *whole* damage, in case the other two do not make restitution, because there existed a mutual conspiracy. But before they actually steal the fruit, C's conscience becomes uneasy, and so he protests and tries to dissuade the other two, but they persist in removing the fruit.

By protesting against the theft, and by endeavoring to dissuade the other two men from committing it, C effectually dissociates himself from A and B and ceases to be a co-operator in the theft that follows. He actually and effectively withdraws before any injury is done to the owner of the fruit. Whatever influence his original agreement to steal the fruit may have had on A and B he effectively neutralizes it by protesting against the theft before it takes place, and by endeavoring to dissuade A and B from committing it. If C had retired after this he would not be responsible for any part of the theft that A and B thereupon committed, because he was not a party to it, and could not be regarded as a *causa vera, efficax et theologice culpabilis damni injusti.* In this case A and B alone would have

been the only persons responsible for the restitution, each one for half, in case both made restitution, and each one for the whole damage in case the other refused or failed to restore his share.

But now that the fruit is stolen and all three are getting ready to start for home, "B, too, becomes uneasy and turns his share over to A." This does not alter the case of B. B has actually stolen the fruit together with A. He is a *causa injusta, vera, efficax et theologice culpabilis damni.* Therefore, he must make restitution. And because there existed a conspiracy between A and B, both become responsible conditionally for the full amount of the damage; that is, on condition that the other party fail to make restitution for his share of the theft. *"Qui simul cum aliis est causa (sive moralis sive physica) totius damni, et quidem aequalis, restituere tenetur in solidum condicionate: in solidum quidem, quia totum damnum intulit, condicionate vero, quia illud non solus, sed simul cum aliis intulit." "Totum damnum infert, qui communi conspiratione cum aliis ad damnum inferendum concurrit, ut si complures conspirant ad expoliandam domum, quia singuli saltem moraliter in integrum damnum influunt, modo conspiratio sit vera et efficax"* (*Noldin ii,* 489).

But, unfortunately for C, after A and B have stolen the fruit, he becomes again a *co-operator formalis et injustus.* "A and B proceed to load the fruit into the wagon. If C would refuse to haul it in, A would most likely back down and leave it; at least as far as C knows, A could not get away with the fruit. But C is a good-hearted fellow and out of human respect allows the fruit to be loaded on to his wagon and helps cover and conceal it on the way in." By so doing C becomes again a party to the theft and as his co-operation this time seem to be necessary to execute the theft, he becomes responsible again *in solidum condicionate* for the full amount of the

theft; that is, on condition that A and B refuse to make restitution for their share.

"*Totum damnum infert is, cujus co-operatio sive moralis sive physica ad damnum inferendum necessaria est, adeo ut ipso non concurrente damnum non fieret, ut si duo expoliant viatorem, quem unus explorare non potuisset, vel si quis fert suffragium necessarium ad injustam sententiam, quam alii eo absente, vel contradicente nunquam tulissent. Etsi enim ejus co-operatio non sufficiat ad totum damnum inferendum, tamen negata co-operatio totum damnum impedire potuisset. Si quis adjuvat furem ad auferendam arcam, quam neuter solus ferre posset, uterque totum damnum reparare tenetur, quia uterque est causa totius effectus, quatenus sine ejus auxilio nullus effectus fuisset*" (*Noldin ii,* 489; *Ballerini-Palmieri iii,* 376).

A, B and C, therefore, are bound to make restitution for the fruit they stole, each one *absolutely* for his own share; that is, for one-third, and conditionally *in solidum;* that is, each one is liable for the whole amount, in case the other two fail to restore their share. A and B are bound, because they conspired to steal the fruit, and by their conspiracy each becomes the author of the whole damage, not, of course, in a physical, but in a moral sense. C becomes responsible conditionally for the whole amount, because, although he withdrew effectively from the conspiracy before any injury was inflicted, still the co-operation, that he lends to haul the fruit home, being necessary or required in order to accomplish the theft, and without which assistance the fruit would not have been removed from the premises, makes C also a moral cause of the whole damage, and, therefore, responsible for the whole restitution in case A and B do not restore their share.

St. Alphonsus says, regarding the practical application of the

above-mentioned principles, that it is rarely advisable to oblige the ignorant and uneducated to make restitution *in solidum,* even though they be bound to it by strict justice, because the ignorant and uneducated do not understand how they should be held responsible for what their partners stole. In fact, says the holy doctor, it may be presumed that the injured party will be satisfied if each person restores the part he himself stole, since otherwise it is greatly to be feared that not even that much restitution will be made. (St. Alphonsus, n. 579).

XVIII. BLESSING THE EASTER WATER ON HOLY SATURDAY.

There seems to exist some diversity of opinion as to the way the holy water should be blessed on Holy Saturday, for the use of the faithful. For instance, one priest uses the blessing in the Roman ritual: *Ordo ad faciendam aquam benedictam,* the same that he uses on ordinary Sundays throughout the year. Another blesses the water in the baptismal font, and then, before pouring into it the holy oils, he takes some of it and adds to it a quantity of water that has not been blessed. Once, having forgotten to take out some of the water before pouring in the oils, he took out some after he had poured in the holy oils. Another, at the same time that he blesses the water in the baptismal font, blesses other water for the use of the people, which is put into a separate vessel and placed near the baptismal font. Are all these ways good and proper, or how ought the water to be blessed on Easter Saturday?

Answer.—The water that the Church blesses in a more solemn manner on Holy Saturday, and which is popularly called Easter-water, is intended by the Church to be used for various purposes. It is intended, first of all, to be used as *baptismal water,* after the holy oils have been mixed with it. This is the principal purpose for which the Church blesses it, as may be gathered from the text of the Missal. When the blessing is finished, the oil of holy chrism and the oil of catechumens are added to it and it is used then exclusively for the administration of baptism throughout the year. But, according to the rubrics, this water thus blessed in a solemn manner on Holy Saturday is used for other purposes besides the

administration of the Sacrament of Baptism, but always *before* the holy oils are added to it.

1. It is prescribed by the rubrics, that during the blessing of the font on Holy Saturday, the assisting priests must take of the water thus blessed and sprinkle the faithful with it. *"Deinde per assistentes sacerdotes spargitur de ipsa aqua benedicta super populum"* (cf. rubrics, Roman Missal, bened. fontis in Sabb. sancto).

2. In the meantime, as soon as the water in the baptismal font has been blessed, one of the ministers or altar boys takes some of the water out of the font before the holy oils have been poured into it, and pours it into another vessel, which holy water is to be used in blessing the houses of the faithful and other places, which the rubrics prescribe shall be conducted on Holy Saturday, either by the parish priest himself or by another priest (Roman Ritual, *de benedictionibus*). *"Et interim unus ex ministris Ecclesiae accipit in vase aliquo de eadem aqua ad aspergendum in domibus et aliis locis"* (Roman Missal, rubrics for Holy Saturday). Some of this water must be poured into the holy water fonts of the church and some of it reserved for the use of the clergy and laity, who are to have access to it to take it for use in their homes on other days besides Holy Saturday (Memoriale rituum, tit. vi).

3. The Roman Missal also prescribes that this holy water, thus blessed with more solemn rite on Holy Saturday, shall be used for the *"asperges"* before the solemn Mass on Easter Sunday and on Pentecost Sunday. On Easter Sunday and on Pentecost Sunday, therefore, the celebrant of the solemn Mass does not bless the water with which he sprinkles the people before the Mass, as he does on ordinary Sundays throughout the year, but he takes of the Easter water, blessed on Easter Saturday, and with this he sprinkles the faithful, chanting the *"Vidi aquam."*

From the foregoing it will readily appear that if the water blessed with solemn rite on Holy Saturday is to be used for these various purposes, no small quantity of it will be required; in fact, more will be needed than can be held in the ordinary baptismal font. It is only natural, therefore, that a diversity of opinion should arise as to the best and most proper way of blessing a sufficient quantity of Easter water to answer these different purposes that the Church has in view when she blesses it. However, one way is not as good as another, and for that reason we will say a word about the different methods proposed in the question.

One priest, as mentioned above, blesses the baptismal font, but at the same time he blesses, with the ordinary form: *ordo ad faciendam aquam benedictam,* which is used on ordinary Sundays, a sufficient quantity of water in a separate vessel, to be given out to the faithful for use in their homes. Now, the Roman ritual says expressly that the water to be used on Holy Saturday in blessing the houses of the faithful must be taken from the baptismal font before the holy oils are added; and the *Memoriale rituum* says the same thing about the Easter water to be distributed to the faithful on Holy Saturday and used in the holy water fonts of the church. All the holy water used for these purposes must be taken from the baptismal font after it has been blessed with the solemn rites of Holy Saturday, but before the holy chrism and oil of catechumens have been added to it.

It is true that the Congregation of Rites (August 31, 1872) permits that on Holy Saturday the water may be blessed privately in the sacristy, using the *ordo ad faciendam aquam benedictam,* and the water may be thus blessed at any hour during Holy Saturday, but not during the offices of the Church, if the priest who blesses the water is conducting the offices of the Church. But this permission

seems to apply only to churches without baptismal fonts and to public oratories. Another priest takes some of the holy water from the baptismal font after the solemn blessing on Holy Saturday, but before he adds the holy oils, and to this water he adds water that has not been blessed, in order to have a sufficient quantity for the fonts of the church and for the people. There is nothing wrong in this procedure. One must be careful, however, never to add *at one time, "unico actu,"* of water that is not blessed a larger quantity than there is holy water to which it is added. The ritual prescribes this, *de materia baptismi.* The reason why the whole mass of water loses its blessing, if at any single time a larger quantity of unblessed water is added than there is blessed or holy water to which the addition is made, is the explicit will of the Church. The Church wishes that the whole mass lose its blessing, if at any one time more water that has not been blessed is added than there is holy water to which the addition is made. But it is permitted to add again and again unblessed water to the holy water, the same as to the baptismal water, provided, always, the quantity of water added never exceeds the quantity of baptismal water, or holy water, at any single addition. It is never lawful to use the *baptismal* water, that is, the holy water in the baptismal font after the infusion of the holy oils, for any other purpose than that of baptizing. The missal and the ritual both state expressly that the water from the baptismal font wherewith the people are to be sprinkled and their houses blessed, etc., must be taken out before the holy oils are poured into it. To use the baptismal water after the infusion of the holy oils for such a purpose is certainly an abuse which cannot be justified. The holy oils are added to the water precisely because it is to be used thereafter for the administration of the Sacrament of Baptism.

The catechism of the Council of Trent says that the Church, guided by apostolic tradition, has uniformly observed the practise of adding holy chrism to the water to be used in baptizing, the more fully to express its efficacy (de Bapt. chrism).

The last method of blessing the Easter water on Holy Saturday, mentioned above, namely, having a quantity of water in a separate vessel near the baptismal font, which the priest blesses at the same time that he blesses the font, is scarcely to be commended. The reason why it cannot be commended is because the solemn blessing of the Easter water is conducted with many ceremonies, as the division of the water in the form of the cross, breathing upon the water, dipping of the Easter candle into the water, etc., all of which ceremonies are restricted to the water in the baptismal font and may not be repeated, even if they could conveniently be repeated, over another vessel of water placed near by.

For these reasons we conclude that if the baptismal font does not hold water enough for the various purposes for which Easter water may be used, then the only thing to be done is to take out of the font as much holy water as can be spared, before the holy oils have been added to it, and to this water add a smaller quantity of unblessed water, which immediately partakes of the Easter blessing.

XIX. SUSPENSION *IPSO FACTO*

Some years ago a certain priest gave considerable scandal by drinking. He was called to headquarters, and well knowing the gravity of his offense and not waiting to be asked, he resigned his parish. With the consent of the ordinary and with a good *celebret* from the Vicar-General, he went on a vacation. On his return the ordinary assigned him to another parish, but before doing so he obliged him to sign a paper to the effect that, should he drink again, he would be *ipso facto* suspended *ab ordine et jurisdictione*. The priest has faithfully observed his promise. Now the points I would wish you to consider are:

1. The priest's faculties were not withdrawn when he resigned his parish and, of course, were not restored when he was assigned to another parish. Would that fact in any way affect the ordinary's ruling?

2. What probability has the opinion which says that the power of the ordinary in such cases is limited to his diocese and therefore does not bind a priest when outside the diocese?

3. Has the Vicar-General power to give this priest permission, when on vacation, to ignore his promise to the ordinary, with the understanding that on his return his promise to the ordinary would again be in full force?

Answer.—1. The fact that this priest's faculties were not taken away from him when he resigned his parish and were not, therefore, restored when he received a new appointment, since he already possessed them, in no wise affects the bishop's ruling in this case. The bishop simply added a condition to the faculties of the priest,

namely, that the faculties were withdrawn *ipso facto* upon indulgence in intoxicating drink. This condition the bishop had a perfect right to add, and thereupon the faculties which before were absolute, now become conditional. To add the condition, it was not neessary to withdraw the original faculties. The bishop may at any time make the retention of faculties by any priest in his diocese conditional, for a sufficient reason. The bishop is the judge of the sufficiency of the reason. The priest, while acquiescing in it, may appeal to a higher tribunal.

2. What probability has the opinion which says that the power of a bishop in this case is limited to the diocese, and therefore does not bind a priest outside the diocese? The opinion has practically no probability. Ballerini-Palmieri says of it: "*Concludemus ipsi non superesse nisi quandam externam probabilitatem, quae inspectis rationibus facile evanescit*" (Tr. xi, 101).

The reason why there ever was any diversity of opinion regarding the bishop's power to suspend a priest for something the priest does outside the diocese is this: In the *Corpus Juris,* cap. *Ut animarum, de constitutionibus in 6°,* we read:

"*Statuto Episcopi, quo in omnes qui furtum commiserint, excommunicationis sententia promulgatur, subditi ejus furtum extra ipsius diocesim committentes, minime ligari noscuntur:* CUM EXTRA TERRITORIUM JUS DICENTI NON PAREATUR IMPUNE."

Relying on this passage from the *Corpus Juris,* some theologians have concluded that the power of a bishop over his priests does not reach beyond the limits of the diocese. That if a bishop threatens a priest with suspension to be incurred *ipso facto* for some transgression, the transgression must take place within the territory of the diocese. If it does not, the suspension is not incurred. But this is entirely false. As Ballerini points out after St. Alfonsus,

in the passage quoted above, the question concerns a judgment of the bishop *per modum statuti,* or by diocesan statute. All canonists are agreed that the diocesan statutes, or rather a censure that is decreed *by diocesan statute,* is not incurred unless the transgression is committed within the diocese. But the canonists also distinguish a *praeceptum personale* from a *statutum.* A *statutum,* or statute, is limited to the territory of the diocese, and binds no one beyond the limits of the diocese. A *praeceptum* attaches to the person and not to the territory; *it sticks to one's bones,* as the *Corpus Juris* has it, *haeret ossibus,* and follows a person wherever he goes, *sicut umbra corpus, et sicut lepra leprosum.* A *statute,* therefore, must not be confounded with a *personal command.* In the case before us there is no question of a diocesan statute binding all priests of the diocese not to drink. The question concerns a personal command or injunction, *praeceptum personale,* given to one individual priest. That command binds the priest personally, follows him wherever he goes, inside or outside the diocese, and the censure which it threatens is incurred even outside the diocese, if the command is disobeyed outside the diocese. In the diocese of Westminster there is a statute forbidding priests to go to the theatre, under pain of suspension, to be incurred *ipso facto.* Since that law is a *statutum,* it does not bind beyond the limits of the Westminster diocese. Therefore, if a priest belonging to the diocese of Westminster should attend a theatre in Paris or New York, he does not incur the suspension. But if the Archbishop of Westminster should forbid a particular priest to enter a public house for the purpose of procuring strong drink, that would be a *praeceptum personale,* as the canonists style it, and that would bind such a priest not only in London, but also in Paris and in New York. It cannot be said that the Bishop passes sentence on the priest outside of his territory;

for, although the transgression takes place out of the diocese, and the bishop's sentence thus has effect outside his territory or jurisdiction, still the sentence goes into effect silently and without trial or legal process. Now, the true and sole reason why a bishop is prohibited by the Canon Law from pronouncing a sentence of censure beyond the boundaries of his own diocese is lest he seem to invade and violate another bishop's territory. If there be no invasion nor violation of another bishop's jurisdiction, there exists no prohibition forbidding a bishop to exercise jurisdiction over his own subjects, even though they be in another diocese, or within the jurisdiction or territory of another bishop. Thus a bishop may dispense in the case of his own subjects; he may command or forbid something under censure to be incurred *ipso facto;* he may pronounce sentence against one of his subjects for a notorious crime, where no legal proceedings or trial and citation and examination of witnesses are required, even though the subject be at the time in another diocese and the transgression have taken place there. A bishop may even proceed legally against his priest outside his own diocese, *cum strepitu judiciario,* summoning witnesses and trying him in open court, provided he receive permission from the bishop in whose diocese the trial takes place.

There can be no doubt, therefore, that if the priest mentioned in our case should partake of intoxicating drink even outside the limits of his diocese, he would incur suspension *ipso facto;* and if on returning to his diocese he exercise the ministry without having the suspension removed, he becomes irregular.

3. Can the Vicar give the priest permission to drink outside the diocese? He cannot. The Vicar-General has just as much power as the bishop gives him. The Council of Trent, Sess. 24, defines the position of vicars-general. They are supposed to receive

sufficient powers from the bishop, so that their position or office may not be vain and an illusion. However, the bishop may and does reserve certain things to himself. In the case before us it cannot be reasonably supposed that the bishop would give the vicar power to thwart and nullify his, the bishop's, purposes and intentions. It must be supposed, in the absence of certain proof to the contrary, that the bishop reserves this priest's case to himself, and that the vicar has no jurisdiction to limit or remove the bishop's censure. The only course open, therefore, to this priest, if he wishes to retain his faculties, is to remain faithful to the written promise that he gave his bishop.

XX. USING THE *OLEUM INFIRMORUM* IN BAPTISM

Being about twenty-five miles from his church, my curate was called upon to administer the Sacrament of Baptism. He did so, using for the unctions the *oleum infirmorum,* the only oils he had with him. I need scarcely state the oil was *oleum ab episcopo benedictum.* Was he justified? Or, is it necessary now to repeat the unctions, *et absolute,* using the oils blessed for Baptism? I have read the case in the *"Casuist"* on Extreme Unction, studied the case carefully and came to the same conclusion as is given. But this seems to me an altogether different case, in which the *oleum catechumenorum* and the *sacrum chrisma* are absolutely necessary.

Answer.—The oils prescribed by the ritual to be used in the solemn administration of Baptism are the *oleum salutis* or *oleum catechumenorum,* and the *sacrum chrisma.* The oil of catechumens is also called *oleum sanctum.* It is oil of olives blessed with exorcisms by the bishop on Holy Thursday, and the catechumen or postulant for Baptism is to be anointed with it before he is baptized. Baruffaldi calls it: *"Oleum exorcizatum ad reddendum illo inunctum verum Athletam Christi, ut in conflictu et adversitate toleranter sustinere valeat."* (Comment. Rom. Rit. tit. x, n. 4.)

The holy chrism, wherewith the newly baptized is anointed immediately after being baptized, consists of oil of olives mixed with balsam, likewise blessed by the bishop on Holy Thursday. This chrism is the same that the bishop uses in the administration of the Sacrament of Confirmation. In the early ages of the Church, the bishop was usually the minister of Baptism, and he anointed

the neophytes on the forehead with chrism immediately after baptizing them, so that the chrism used by the bishop was in reality for the Sacrament of Confirmation. The unction on the top of the head by the priest was introduced to supply for the unction on the forehead by the bishop when the bishop was absent and when, consequently, Confirmation could not be immediately conferred as usual. Later on, even when the bishop was present and confirmed immediately after Baptism, if a priest baptized he also anointed with chrism, but not on the forehead, but on the top of the neophyte's head.

Since, therefore, the oil of catechumens is blessed with special exorcism, and to serve for the anointing of those who are about to be baptized, and since the chrism used in Baptism must be the same as used for the Sacrament of Confirmation, it is evident that they may not be replaced by the *oleum infirmorum* without sin. Baruffaldi says that if by *inadvertence* one oil is substituted for another, it would be a venial sin; but if the substitution were the result of carelessness or negligence, it would be a mortal sin. "*An peccet sacerdos, qui administrans Baptismum, unum pro altero oleo accipiat et utatur, v. g. oleo chrismatis pro oleo catechumenorum? Cui respondeo, quod seclusa inadvertentia, quae non nisi peccatum veniale inducit, peccaret graviter, si hoc negligenter faceret.* And he maintains that the unctions are to be repeated, although they are not of the essence of baptism. "*Quia ad effectum distinctum applicantur ista olea, et in administratione falsa non concordarent verba cum effectu olei, ideoque illuderetur significatio; si enim mutare verbum in administratione peccatum est, et sacramentum repetendum est, multo magis hoc erit faciendum in mutatione materiae. In hoc tamen casu theologi in varias sententias distrahuntur. Dicet quis: Oleum non est materia baptismi, neque proxima*

neque remota, sed quid sacramentale. Respondeo, repetendam esse unctionem cum oleo, non ablutionem cum aqua." (Tit. x, 19-20.)

Baruffaldi admits at the same time that there are many theologians against him in this view of the matter.

It is evident that it is not so serious a matter to substitute one oil for another in administering Baptism, since there is no question of the validity of the Sacrament. But this is not so in Confirmation and Extreme Unction. Even in Baptism, says O'Kane (Rubrics, 260), the mistake is a serious one and ought to be corrected at the moment if the error is detected and can be at once repaired. If, however, the mistake is discovered only some time afterwards, O'Kane thinks that Baruffaldi's opinion is too severe, and he inclines to the opinion of Falise, who does not insist on a repetition of the unctions in Baptism, because: 1. One oil is probably a *valid* substitute for another even when it is question of a Sacrament; with much more reason, therefore, may one be substituted for another where there is no question of a *Sacrament,* but only of a *rite;* 2 the omission of the rite does little or no injury; 3. the repetition of the rite would often be an occasion of murmur and scandal. If, by mistake, one oil has been substituted for another in Baptism, Falise agrees with Baruffaldi that the mistake ought to be corrected *a moins toutefois que les circonstances n'indiquent la marche contraire.* (Falise, Du Baptème, ch. II. n. 8).

If a repetition of the unctions would cause scandal or adverse comment, they are not to be repeated.

In the case given here, it would scarcely be prudent to repeat the unctions given with the *oleum infirmorum.* Such repetition would arouse comment and adverse criticism very likely and lessen the people's confidence in the curate. It would be better to let the matter remain as it is. *Ante factum,* however, it would have been

better to have omitted the unctions altogether and to have advised the parents of the child to this effect, and then later on to have supplied them, *data opportunitate,* with the proper oils. Fr. Genicot, S. J., gives a case in his *Casus Conscientiae* (I. cap. 4, n. 1) similar to the one we are considering. A priest journeys about three miles to administer Baptism in a private chapel. Upon arriving at the chapel he discovers that he has forgotten the baptismal oils. He administers Baptism just the same, omitting the unctions, however. Later on he fails to supply the unctions. Genicot does not blame this priest, provided he carried out all the other ceremonies of Baptism. It would be asking too much, he says, to require this priest either to defer the baptism, or to make a journey of six miles (home and back again) to get the oils. And this seems to agree with an answer of the S. C. de P. F., Jan. 21, 1789, which says that a sufficient reason for omitting the solemnities of Baptism would be *"quamcunque rationabilem et gravem causam quae impediat earumdem solemnitatum administrationem."* But the unctions should have been supplied later on, the same author says, *"Ubi tempus et occasio opportuna adfuerint, in ecclesia vel oratorio, prout additur in citato responso."*

Of course, if the curate in our case did not think that there would be offered later on an opportunity of supplying the unctions with the proper oils, it was better to use *doubtful* matter to administer a rite than not to administer the rite at all. If, however, the unctions could have been supplied later on, the curate should have waited until he could procure the proper oils.

XXI. SANATIO IN RADICE

Case: The priest engaged in parish work meets quite frequently with cases in which neglectful Catholics have married outside the Church and in some cases it is impossible to persuade them to have the marriage validated in the ordinary way by coming to the pastor or his delegate and renew the consent before him and two witnesses. Special difficulty is experienced in the case in which one of the parties is a non-Catholic. Can the marriage be validated by the *sanatio in radice* if the non-Catholic is of such a frame of mind that it is absolutely useless to speak to him of the Catholic education of the children? Again, may the *sanatio in radice* be obtained though one of the parties is left in ignorance of the concession of this validation of the marriage? Can the Bishop give the *sanatio in radice?*

Answer: The *sanatio in radice* is the validation of a marriage that implies besides a dispensation from (or the cessation of) an impediment, a dispensation from the law of renewing the consent, and has also, by fiction of law, a retroactive force, which gives it the same canonical effects as though the marriage had been valid from the beginning. The validation of the marriage is effected at the moment when the *sanatio* is granted, but its retroactive effect reaches back to the beginning of the marriage, unless it is expressly stated otherwise in the concession of the favor. The dispensation from the law of renewing the consent can be given even if one or both of the parties to the invalid marriage have no knowledge of the granting of the *sanatio* (Canon 1138).

The Church can dispense with her laws and accept the natural marriage consent of the parties, but that consent must be there at the time when the *sanatio* is granted, otherwise the *sanatio* is not valid. If the parties are already estranged, and one has perhaps begun divorce proceedings, the priest should not ask for a *sanatio* of such a marriage. The Church cannot supply the consent; wherefore, if that consent has been revoked by the parties, or by one of them, no *sanatio* can be given. The consent once given is by law supposed to persevere until it is certain that it has been revoked (cf. Canon 1093).

As to the question what marriages can be validated by the *sanatio in radice,* the following is to be said: Every marriage contracted with the consent of both parties which would naturally suffice, but which consent is juridically ineffective on account of a diriment impediment of ecclesiastical law, or for lack of the prescribed form of marriage, can be validated by the *sanatio in radice,* provided the consent perseveres.

Marriage contracted under an impediment of the natural or the Divine law is not validated by the Church by means of the *sanatio in radice,* though the impediment should have ceased afterwards, not even from the moment of the cessation of such an impediment (Canon 1139).

The Code does not specify which impediments are of purely ecclesiastical law, and which are of the natural or Divine law. It only states in Canon 1038 that the Supreme Authority alone has the right to declare authentically what are impediments of the Divine law. In the case of some impediments, there is no doubt that they are of the Divine or the natural law—for instance, the impediment of an existing valid marriage bond, insanity, and some cases of impotency.

The law states that no *sanatio in radice* is granted for marriages rendered invalid by reason of an impediment of the Divine or the natural law. That is evident, for the Church cannot validate such a marriage not having the power to dispense with an impediment which is with certainty contained in the natural or the positive Divine law. Furthermore, the law states that the Church does not grant a *sanatio* for these marriages, even after the impediment of the Divine or the natural law has ceased. She certainly can grant the *sanatio* from the moment that the impediment ceased, but she declares that she does not want to validate these marriages by a *sanatio.* If then a couple is living together and one of them had been validly married before but got a divorce and married again while the former partner was living, that marriage cannot be validated by a *sanatio* though by this time the partner of the first marriage is dead. They must appear before an authorized priest and two witnesses and renew the marriage consent.

If there is lack of matrimonial consent at the present time on the part of even one of the parties, no *sanatio in radice* can be granted for the marriage, and it is immaterial whether the consent was lacking from the beginning, or whether it existed in the beginning but was afterwards revoked. If there was no matrimonial consent in the beginning, but that consent was given afterwards, the *sanatio* can be applied from the moment of the giving of the consent (Canon 1140).

As we saw before, the Church cannot grant the *sanatio in radice* if no mutual matrimonial consent exists at the moment when the *sanatio* is sought, for the Code states plainly in Canon 1081 that the matrimonial consent cannot be supplied by any human power.

As to the power of granting the *sanatio in radice* the law is as follows: The *sanatio in radice* can be granted by the Apostolic See

alone (Canon 1141). This rule is a natural conclusion from the preceding laws on marriage. Since the *sanatio* necessitates the dispensation from the required legal form of marriage, and perhaps from other impediments of the common law, no authority inferior to the Holy See can dispense with the common law of the Church The Supreme Head of the Church may, of course, delegate power to others to grant the *sanatio.* He actually does so as the faculties of the bishops of the United States prove.

The faculties now granted to our bishops on their individual application contain the power given to them by the Holy Office to grant the *sanatio in radice* for marriages contracted outside the Church (before a civil magistrate or a non-Catholic minister), in which one party is a Catholic and the other a non-Catholic, baptized or unbaptized. He may grant the *sanatio* in cases where the consent cannot be renewed in the prescribed canonical form, if the non-Catholic cannot be reminded of the invalidity of the marriage without danger of serious harm or inconvenience to the Catholic party, or if the non-Catholic party cannot in any way be induced to contract the marriage before an authorized Catholic priest and witnesses, or to make the prescribed promises. The Ordinary can make use of the faculties only when there is no other impediment of marriage, unless he has the faculty to dispense from such other impediment.

The S. Congregation of the Sacraments also grants faculties to our bishops to give the *sanatio in radice* for marriages rendered invalid by an impediment of minor degree. (These impediments are enumerated in Canon 1042.) They may make use of this faculty if it would cause great inconvenience to require the renewal of consent from the party ignorant of the impediment, provided the

consent perseveres and that there is no danger of a civil divorce. In both faculties the SS. Congregations insist on recording the granting of the *sanatio* and the execution of the favor so that proof may be had for the future of the validity of the marriage in the external forum.

XXII. AN HEIR'S DUTY TO PAY A TESTATOR'S DEBTS.

A father dies heavily insured and heavily in debt. His children get the insurance, and could, with the money, pay the father's debts. This they refuse to do, however, but instead they are enjoying themselves with the money. (1) Are they bound to pay the father's debts? (2) If some of the children refuse, is one of them bound to pay the whole, or his *pro rata* share?

Answer.—Blackstone defines an heir to be "him upon whom the law casts the estate immediately on the death of the ancestor." The term "heir" in the Roman law applied equally to him who took by will and by descent. The civil law, says Kent, held by a strange fiction, that the heir was the same person as the ancestor, *eadem persona cum defuncto.* The estate, instead of being changed by the descent, was deemed to continue in the heir, who succeeded to the person and place and estate of the ancestor, and to all his rights and obligations. The heir is, therefore, under the civil law said to represent the moral person of the intestate. The creditor could come upon the heir, not only to the extent of the assets, but to all the other property of the heir. Later on Justinian allows the heir to protect himself by giving him the *benefit of an inventory.* These provisions of the Roman law on the subject of succession have insinuated themselves into the Canon Law of the Church, as well as into the law of successions of the Continental nations of Europe. Thus the canonist not only uses the terminology of the Roman law in this particular matter of succession, but is often guided by the spirit of the Roman or civil law in rendering decisions in matters of justice. According to the law of the United States, an estate by

descent renders the heir liable for the debts of his ancestors, to the value of the property descended. In New York State, and in most of the States of the Union, heirs are liable for the debts of the ancestor by simple contract, as well as by specialty, to the extent of the assets descended, on condition that the personal estate of the ancestor shall be insufficient and shall have been previously exhausted. The general rule of the English and American law is that the personal estate is the primary fund for the discharge of the debts, and is to be first applied and exhausted. "I assume," says Kent, "that the rule prevails generally in these United States that the lands descended to the heirs are liable to the debts of the ancestor equally, in all cases, with the personal estate" (Comment iv, 422).

According to the Roman law, and therefore according to the Canon Law, heirs succeeded to an estate of an ancestor either *titulo universali* or *titulo particulari.* A *universal* heir is one who succeeds to the whole estate or property of the ancestor or testator, whether such heir be one person or several, and whether he inherit by virtue of a last will and testament, or succeed to the property and estate of an intestate. A particular heir is one who comes into possession of specific property by *particular title,* whether of legacy or purchase or gift. The *universal* heir was, as has been said, considered by a fiction of the Roman law one and the same person as the ancestor. His substitution to the ancestor was a kind of continual succession, similar to that which is applied to a corporation.

If the heir succeeded to all the property, he was said to be *heres ex asse, i. e.,* sole heir. If he received a fixed part, he was called *heres ex parte,* v. g., *heres ex semisse* received one half, *heres ex dodrante* received three-fourths of the inheritance, etc. All these heirs succeeded *titulo universali.* Since it is the *titulus universalis,*

whether to all the property or to a specific part of it, as one-half, one-fourth, etc., that constitutes the heir one and the same person as the testator, *eadem persona cum defuncto,* as the civil law has it, all heirs who succeed to an inheritance *titulo universali, vel ex asse, vel ex parte,* are liable for the debts of the ancestor, at least to the extent of the property descended. If the universal heir be a sole heir and succeed with benefit of an inventory, he cannot be held liable *in foro interno* for the debts of his ancestors beyond the assets of the ancestor descended. If he succeeds without the benefit of an inventory, some theologians maintain that he may be liable not only to the extent of the assets descended, but to all his other property. Since this is not certain, an heir succeeding without inventory cannot be compelled in conscience to pay his ancestor's debts beyond the extent of the ancestor's property descended, but if creditors or legatees have succeeded in recovering even out of the heir's assets that did not descend from the ancestor, they could not be obliged in conscience to restore. If the *heres universalis* is not one person but several persons, then in conscience each one is liable for his ancestor's debts in proportion to the amount of his share of the inheritance. Thus, if each heir received one-third of the estate, each one of them would be liable for one-third of the testator's debts, even in case the other heirs refused to pay their *pro rata share. "Qui acceptat hereditatem, eo ipso assumit tum bona et jura tum etiam onera et debita REALIA defuncti, modo non excedant vires heredidatis; PERSONALIA autem jura et onera defuncti cum ipso extinguuntur."* (Noldin, de contr. 545.)

Therefore, the heirs are bound in conscience to pay: (1) the legacies willed by the testator, whether to private individuals or to public or religious bodies; (2) the testator's lawful debts. All this to the extent of the property inherited. If some of the heirs refuse

to pay, the others are bound *pro rata, i. e.,* if they received one-half of the testator's property, they are liable in conscience for one-half of his debts. As a rule, there is no difficulty in this matter, as the civil law makes ample provision for the paying of a testator's debts out of his assets.

A legatee, devisee, etc., being an heir *titulo particulari,* according to the civil law, is not liable for the debts of the divisor or testator. But by the admirable equity of the civil law, says Kent, donations of this nature were not allowed to defeat the just claims of creditors, and they were void as against them, even without a fraudulent intent. It is equally the language of the modern civilians, that donations cannot be sustained to the prejudice of existing creditors.

It is clear, therefore, that the children of the man in this case who died heavily insured and heavily in debt, are bound in conscience to pay their father's debts out of his insurance which they inherited, nor may they be absolved until they are disposed to do so. If some of them refuse to pay, the others are bound to pay a rateable share, *i. e.,* such share of the father's debts as shall be a just proportion of the insurance they received.

XXIII. NULLITY OF MARRIAGE OWING TO THE IMPEDIMENT OF FEAR

The following is a summary of the latest marriage case tried before the Rota:

On March 30, 1875, Catherine Alexandri and George Bal were married at Paris; it was said that Catherine did not freely consent to the marriage, but went through the ceremony through the influence of her mother. The marriage proved an unhappy one, in a short time the couple separated, and in 1883 a civil decree of divorce was granted to them. In 1908 Catherine Alexandri brought her case before the Archiepiscopal Curia of Paris, impugning the marriage on the ground of fear and violence, and the sentence was given in her favor. The defender of the bond appealed against this sentence to the Rota, and in a preliminary meeting of it was agreed that the question to be decided should be:

Is the nullity of the marriage shown?

The auditors have decided:

In the affirmative.

After quoting from the *Corpus Juris* two passages regarding the necessity of consent for the validity of marriage, they point out that the doctors interpreting these passages say that "at least according to ecclesiastical law fear is a diriment impediment to matrimony when it is grave, even relatively unjust, and produced in order to extort consent to a marriage; which they extend also to reverential fear, viz., that by which we dread the indignation of one in whose power we are, but in this case the fear must be accompanied by something else, importunate or most pressing entreaties, abuse,

vexations, etc., so that the fear be really grave. In this sense the S. Congregation of the Council has frequently declared marriages contracted under such influence to be null."

All these elements are verified in the case under sentence. On the one hand the girl's mother wanted the marriage at all costs; for on account of the extravagance of her husband, who was Minister in Roumania, of the immense expenses in which both she and he indulged, and for various other causes, all the property of the family had practically disappeared. An evident remedy for this ruin was to be found in the marriage of her daughter with George Bal, a youth of great wealth who would improve the status not only of the girl, but would liberally help the entire family and especially the mother, who would thus be saved from the certainty of her poverty becoming public and from being obliged to return to Roumania or Moldavia. On the other hand, the girl, who was eighteen years of age at the time and of a gentle and timid disposition, absolutely abhorred the proposed marriage, for her affection had been centered for some years on a youth from her town, Alexander Steriadi, to whom she considered herself engaged; besides George Bal was, especially at the time, so strikingly ugly as to be repulsive not only to the girl, but, as the witnesses testify, to everybody.

The mother determined to break the will of the reluctant girl and bend her to her purpose. She is described by all the witnesses as a domineering woman who, in the almost constant absence of her husband, exercised full sway in the house and could not brook resistance from anyone. She left nothing undone to attain her end; for first she got Alexander Steriadi out of the way by persuading him to return to Roumania to make his fortune; then she made up with George Bal and introduced him into her house, but as her daughter from the very beginning was opposed to the marriage

with George Bal, she devised and applied means to bend her will, by dwelling on the miserable plight of the family, their imminent ruin and degradation and the necessity of returning to Roumania, the only remedy being the marriage with Bal, and when all these arguments proved fruitless she followed them up with frequent abuse, grave reproaches and continual quarrels. But the girl refused to yield. Whenever she was brought into the presence of George her behavior was cold and severe, although she did not dare to make known by words or deeds her feelings of repugnance to him because her mother was always on the watch and never left her alone with him. George himself in his evidence before the Judge testified that he was struck by her coldness. After these meetings the mother used to abuse and even beat her daughter—a fact mentioned by all the witnesses as notorious. The girl suffered all the more from this from the fact that she had no one to turn to; her father was away in Roumania and indeed favored the mother's designs; her elder sister was in the city of Valencienne, while the younger one was a mere child incapable of rendering any assistance.

This repugnance lasted until the marriage as the witnesses bear testimony; indeed the fact was almost notorious. On the day of the marriage the girl looked like a victim led to the sacrifice; George Bal himself remarked on her sadness, and the same sadness affected more or less all present, so that one of the servants remarked that it was more like a funeral than a marriage. It is true that the girl expressed her matrimonial consent before the priest as she herself confesses, but this was because she had nowhere to turn at this last moment and she muttered her consent under the influence of the fear and moral constraint under which she had been laboring for many months. George Steriadi, the brother of Catherine's former betrothed, wrote to Madame Alexandri a letter concerning which

he testifies: "I insist upon the fact that this marriage with M. Bal was contracted against the girl's will in consequence of the pressure brought to bear upon her by her mother. I was so affected and indignant that at the time I wrote a violent letter to the mother which was, doubtless, regrettable but excusable by reason of the grief my brother felt at her breaking of her word." This evidence implies that it was well known in the family that the marriage had not been contracted freely.

The same thing was shown by the unfortunate results which followed immediately upon the marriage. For the aversion which Catherine had conceived for her husband increased rather than diminished for, as both he and she testify, Catherine abhorred matrimonial relations with him not on conscientious grounds (for she thought she was legitimately married), but on account of her dislike and repugnance to her husband which she could not overcome. The witnesses testify to the quarrels, abuse, beatings, etc., which followed, so that even during the first year of the marriage the husband wished to secure a separation from his wife, and was only restrained from this, as he himself says, because he dreaded the scandal and publicity that would follow. But the discord between them continued to grow worse, and after about eighteen months the plea for separation was filed and at last a civil divorce was pronounced between them.

All this is proved from the acts and allegations. It is true that several of the witnesses only testify to what they have heard, but it must be remembered (1) that after thirty-three years many of the eye-witnesses of the events are dead; (2) that many of the witnesses who have deposed in the case are to be believed because they treat of a matter which was well known in the family, they had their information from good sources and at a time when there was

no question of a case for nullity, and (3) that there are some eye-witnesses who testify to the leading facts.

Nor can it be said that the petitioner, Catherine Alexandri, is open to a suspicion of bad faith because she allowed such a long time to elapse before impugning the validity of the marriage. For there is a good reason for this. She knew nothing of the nullity of her marriage until about 1907, when she attended a catechistical instruction in the Church of St. Honoré in Paris, and heard an explanation of the diriment impediments of marriage and, in particular, of the impediment of violence and fear. Struck by this she went to the Abbé Vigneron who was her adviser and who consulted an expert on the question and even came to Rome for the purpose of obtaining information. It was thus that the case was brought before the ecclesiastical judge, as is testified by the Abbé Vigneron.

In view of all this the three auditors, Serafino Mary (*Ponent*), Francis Heiner (*Auditor of the Bench*), and John Prior, confirm the sentence of the Archiepiscopal Curia of Paris and pronounce that: *"The nullity of the marriage between Catherine Alexandri and George Bal is proved,"* deciding that the said Catherine Alexandri is obliged to pay all the expenses of the case.

XXIV. FREQUENT COMMUNION

Dear Editor:

I am greatly puzzled by a certain recent occurrence in parochial life and have desided to seek advice from the HOMILETIC. The case is as follows: During a retreat for first Communion I gave an instruction on frequent Communion to the children. On the day when the little lovers of Christ came to the altar rail, I took advantage of the occasion to exhort them as well as their parents and others who were present to frequent and even daily Communion. I was gratified at the result. All that week fully one-half of the children communicated daily, and many of the parishioners followed their example. Now, here is the bothering part: The pastor saw the children dressed in their white garb on Friday and Saturday morning at the rail. Upon inquiry he heard of my Sunday instruction. He sent for me and read me a lecture which stunned me. I was forbidden to mention the subject of frequent Communion till further notice. In vain I pleaded the decree of our Holy Father. I was told my duty was to obey my pastor. His arguments were about Confession and routine, etc. Now, what am I to do? It would be easy to obey him, but would I be doing the right thing? Thanking you, etc.,

Yours in Christ,

FATHER N.

Answer.—Our friend seems to be overtroubled about the matter. It is easy to know what to do, since it is not difficult to know the right thing. We are obliged to obey the voice of God and not that of man. Without doubt the instructions of a pastor are to be obeyed by an assistant, otherwise there would be no harmony, no unity, without which there would be no hope of success in any field of labor, particularly in the vineyard of the Lord. But there is no obligation to obey the commands of the head of the parish when his orders are in direct contradiction to the commands of

his and our superiors. When our bishop, or the Holy Father, gives us specific commands which impose on us duties at once clear and feasible, then we are bound to obey these commands, our pastor or anyone else to the contrary notwithstanding. In the matter of frequent Communion, Pius X. has not left us free to do as we like. He has obliged all having the direction of souls to lead them frequently, yea, daily, to the Sacrament of the altar. I insist he has not left us free, he has placed on our shoulders an obligation which cannot conscientiously be shirked by any priest, be he bishop or pastor or curate. This position is clear from a study of the attitude of the present reigning Pontiff with regard to the blessed Sacrament. Pius X. has proposed to himself as the object of his special endeavor "to restore all things in Christ." It would seem from a cursory survey of his line of action that his method is to awaken love for Christ in the hearts of His children. We find him a staunch advocate of devotion to Christ in the blessed Sacrament, and particularly of frequent Communion.

Let us refer here to some of his decrees, etc., on this matter:

May 30, 1905.—Pius X. indulgenced a "Prayer for the spread of the pious practice of daily Communion."

June 4, 1905.—The Holy Father decided to close the Eucharistic Congress at Rome in person. The following passage is taken from his allocution: "I beg and beseech of you all that you recommend the faithful to receive the Divine Sacrament. And I address myself in a special manner to you, my dear sons, who are priests, in order that Jesus, the richest Treasure of paradise, the greatest Good ever possessed by poor, forlorn humanity, may not be abandoned in so injurious and thankless a manner."

December 20, 1905.—Decree concerning the frequent and daily reception of the holy Eucharist. This is the first in importance. It

opens with a rapid historical sketch; then, in eight short paragraphs, we have some perfectly clear rules, or answers; and, as a conclusion, an absolute forbiddance of contentious disputes concerning the dispositions required for the frequent and daily Communion. Articles 1 and 2 are to be adhered to strictly:

"1. Frequent and daily Communion, as a thing most earnestly desired by Christ our Lord and by the Catholic Church, should be open to all the faithful of whatever rank and condition of life; so that no one who is in the state of grace, and who approaches the Holy Table with a right and devout intention can lawfully be hindered therefrom.

"2. A right intention consists in this: That he who approaches the Holy Table should do so, not out of routine, or vainglory, or human respect, but for the purpose of pleasing God, of being more closely united with Him by charity, and of seeking this divine remedy for his weaknesses and defects."

February 14, 1906.—Those who receive Communion at least five times in the week are able to gain plenary indulgences, even though they go to Confession only once a fortnight, or once a month, or even less often—for the decree puts no limit.

August 10, 1906.—The brief *Romanorum Pontificum* approves and enriches with indulgences and extraordinary privileges the Priests' Eucharistic League (*Lega Sacerdotale Eucharistica*), instituted for the special object of "bringing the faithful to the practise of frequent daily reception of the holy Eucharist."

By a favor without precedent, confessors enrolled in this league can impart to those of their penitents who are accustomed to communicate daily, or nearly so, a *plenary indulgence* once a week.

August 16, 1906.—Cardinal V. Vannutelli, delegated by the Pope, declared at Tournai that the great papal act was "the fruit, the

victory, the triumph of the Eucharistic Congresses," and that it should serve as a guide in all their undertakings.

September 15, 1906.—The decree of December 20, 1905, is to be applied not only to grown-up people, or to the youth of either sex, but to children besides, once they have made their first Communion according to the rules of the Roman Catechism. That Catechism allows them to make it as soon as they have sufficient discretion. Every contrary practice that may anywhere prevail is condemned.

December 7, 1906.—Sick people who have been laid up for a month, without any sure prospect of speedy convalescence, are allowed to receive the holy Eucharist, although they have taken some nourishment since midnight *per modum potus;* and that once or twice a week, if the blessed Sacrament be kept in the house; if not, once or twice a month. (It has been explained that such things as chocolate, tapioca, semolina, soup containing bread-crumbs, are covered by the expression *per modum potus.*)

March 25, 1907.—The preceding decree is extended to those who, though seriously ill, are obliged, or able, to leave their beds at times during the day.

April 10, 1907.—Bishops are desired to have celebrated yearly in their cathedrals a special Triduum, for the object of exhorting the faithful to frequent Communion. In parish churches one day of religious exercises may be regarded as sufficient. Special indulgences granted.

May 8, 1907.—General leave given to distribute holy Communion in private oratories to all those who attend Mass—"saving parochial rights"—which means except in the case of the Easter Communion and Viaticum.

July 14, 1907.—A brief once more appointing Cardinal V. Vannutelli Papal Legate to the Congress of Metz, which was wholly

dedicated to the subject of holy Communion. "Here," says the brief, "we surely have the shortest way towards procuring the salvation of each person in particular, as well as of society." And the Cardinal, in closing the Congress, congratulated it upon having been the "faithful, docile and unfaltering echo of the decree on daily Communion."

Conclusion.—Thus has his Holiness Pope Pius X. in the past four years of his Pontificate heaped act upon act to make the Catholic world understand that—to quote the letter addressed to the Legate for the occasion of the Metz Congress—"the center of Christian life, and, so to say, the soul of the Church, is found in the Eucharist."

According to the decree, then, of December, 1905, wherein the Supreme Ruler of the Church—the Ruler of bishops and pastors and curates as well as of the faithful—expresses his will, the faithful, including the children, are to be brought to the practise of frequent and even daily Communion. Are we not right in saying that such a manifestation of will, made with such insistence on the part of the supreme legislator, is nothing more nor less than the manifestation of the will of Christ himself? And are we not, therefore, obliged to obey it? It is true that the decree is not an infallible one, but it is an authoritative one. Those who have studied the theological tracts on the constitution of the Church know full well that they owe a ready obedience to such decrees. No pastor is allowed to follow *ad libitum* his own views on the matter. This decree is both doctrinal and disciplinary. This is the view set forth by Cardinal Vannutelli, one of the signers of the decree. As this matter is well developed in a brochure, entitled "The Eucharistic Triduum," by Père Lintelo, S.J. (translated by Père Zulueta, S.J.), we here quote from it:

"This decree is both a doctrinal and disciplinary one." Consequently, it regulates something in the sphere of doctrine, and enjoins something in the sphere of action or practise.

(a) In the Sphere of Doctrine, the decree affirms certain truths, and, by the very fact of doing so, indirectly imposes a duty—that of mentally accepting the truths affirmed. It does not indeed bind individual Catholics actually to practise frequent or daily Communion, under pain of sin. It ought not to be necessary to emphasize so great a truth. But human nature is ever liable to extremes. Thus the decree itself records the grotesque exaggerations in the past on the part of some who, justly alarmed at the evil fruits of anti-Eucharistic Jansenism, fell into the opposite extreme of representing daily Communion as a divine precept. But, on the other hand, this tendency to exaggerate is by no means confined to advocates of the "salutary practise." It also reveals itself in those who, fighting shy, on one pretext or another, of the Pope's pressing invitations to the Holy Table, take refuge in the fanciful plea that priests who earnestly promote daily Communion in obedience to Article VI. of the decree, are equivalently foisting a new precept on the faithful. On the same principle, the zealous parish priest who actively promotes public night prayers in his church, or daily recitation in common of the Rosary in families, is creating a new precept. And, certainly, the rule of monthly Communion, so strongly impressed upon children of Mary and members of guilds, ought, on the same grounds, to be regarded as tantamount to a precept.

There is a lack of proportion in all this. The truth lies between the two extremes. Neither the decree nor its promoter contemplates the use of daily Communion as an obligation. But the Papal pronouncement does, of its very nature, oblige us—ecclesiastics and laity—to give *real interior assent of the mind* to the teaching and

principles of Eucharistic practise which it lays down, and consequently to abandon, as false, all spiritual theories which conflict with that teaching and with those principles, or which render either nugatory. As our author puts it: "If infallibility has not spoken, authority, at all events, has." It is unnecessary, in a work intended for priests, to deal with that too common delusion that infallible utterances are the only ones which claim the *inward* and *conscientious* submission of Catholics.

(b) IN THE SPHERE OF ACTION, too, the decree imposes several things. In Article V. confessors are told to beware of hindering any one (*ne quemquam avertant*) from even daily reception of the Eucharist who receives in the state of grace and with a right intention. According to Article VI., priests—*i. e.*, "parish priests, confessors, and preachers, in accordance with the approved teaching of the Roman Catechism" (*Part II., cap.* 4, *n.* 60)—*are frequently and with much zeal to exhort* the faithful to this devout and salutary practise. In Article VII. the practise is ordered to be promoted "especially" in "Religious Orders and Congregations of all kinds . . . in ecclesiastical seminaries, and in Christian establishments, of whatever kind, for the training of youth." Further, after the publication of the decree writers are ordered to abstain "from *contentious* controversies *concerning the dispositions requisite* for frequent and daily Communion." In the concluding sentence of the decree His Holiness is stated as having "further ordered" that "local ordinaries and regular prelates," in their reports concerning the state of their respective dioceses or institutes, should inform the Holy See *concerning the execution of the matters therein determined.* Here, then, we have not a few duties imposed by the said decree. We may sum up the matter thus: While the actual use of frequent and daily Communion is not enjoined, many other things

are ordered for bringing about as widespread an adoption of that practise as possible among all classes of the faithful.

Yet, with regard even to actual practise, the decree, while giving no command, contains something far more pressing than a mere spiritual suggestion. It gives an *urgent* counsel—since repeated many times by the Holy See in various forms—to all the faithful, children communicants included, as the Answer of September 15, 1906, puts beyond all cavil. This, then, is no mere refinement of piety, to be indulged in by such as have a taste for it.

Importance and Authority of the Document

"As the decree of the Sacred Congregation of the Council on Daily Communion has been solemnly promulgated by the command of the Sovereign Pontiff, it becomes, therefore, a legislative Act passed by the universal legislator, and the whole Church is bound to obey it . . . all teaching opposed to what it declares to be that of the Church regarding the practise of daily Communion must be withdrawn, and be silent henceforth; every custom or practise opposed to what it ordains must cease" (*Tesnière, "Commentary," p.* 16).

Here are some declarations made by Cardinal Vannutelli, the dignitary who signed the decree, and Papal Legate, in his opening speech at the Eucharistic Congress at Tournai, August 16, 1906:

"It is competent authority that speaks concerning frequent access to the Holy Table . . . This great pontifical Act, so maturely considered, and so seasonably promulgated, *is at one and the same time both doctrinal and disciplinary.*"

Under these circumstances, theologians declare that Catholics are bound in conscience to yield to the decree "an interior assent of

the mind, even though the decree have not the character of a final judgment that it is of its own nature unalterable . . . To refuse that assent would be to sin by rashness (*Choupin, S.J., "Valeur des décisions du Saint-Siège"*). If infallibility has not spoken, *authority,* at least, has.

The Cardinal, moreover, boldly proclaimed the duty of everyone:

"All of you, illustrious members of the Episcopate, civil magistrates, presidents of organizations, priests, religious, laity—Catholics here present—you have all fully understood, as I am glad to bear witness, the duty incumbent upon this Congress—the first assembled since the decree was issued. That duty can be no other than gratefully to take action upon the same, to welcome it with reverence, to hail it with enthusiasm, and make it henceforward the *watchword* to be woven upon our banner for a beneficent propaganda, and to serve as a symbol of the perfect union which should reign in future amongst all Catholics.

"The decree of December 20 (1905) is, in truth, like a rainbow appearing in the firmament of the Church as a sign that the squall has blown over, and that the Heart of Jesus—the Heart of the King of Peace in the Eucharist—resumes His undivided empire over souls, even as, in nature, after a storm, the sun once more freely diffuses light and heat."

There ought, then, to be no obscurity upon the question of the duty of priests with regard to daily Communion.

To Priests

1. Their Duty.—"Parish priests are bound, in virtue of their pastoral office, to exhort the faithful frequently to take as much care to nourish their souls daily with this Sacrament as they deem

it necessary to bestow upon securing material bread for the nourishment of their bodies. For *it is evident* that the soul has no less need of food than the body. And it will be extremely useful for winning over their hearers if preachers recall to their minds the immense, and wholly divine, benefits which flow from holy Communion. Let them discourse, in particular, upon that miraculous and prophetical bread—the manna—with which the Israelites were obliged to nourish themselves each day, and give authorities from the writings of the fathers—those powerful advocates of frequent reception of this Sacrament. For it was not St. Augustine alone who expressed the sentiment: 'Since you sin daily partake daily of the antidote to sin.' If anyone will examine into the matter he will find that it conveys the mind of all of those fathers who have treated of holy Communion" (*Roman Catechism, Part II, chap, iv. n.* 54).

This passage from the Catechism of the Council of Trent is referred to in several documents of Pius X. relating to daily Communion.

Let us add the following words taken from the same Catechism, n. 39: "There is, in fact, *no class of the faithful* to whom the knowledge of all that can be said of the wonderful power and fruits of this Sacrament *is not easily accessible and at the same time most necessary.*"

2. Is Every Pastor Bound to Procure Daily Communion amongst His Flock as Far as Possible?—"The inability to communicate under which many of the faithful labor, if it be involuntary, is a misfortune—a distressing poverty which should move the compassion and zeal of pastors to diminish the same to the best of their power. If it be voluntary, and due to contempt for the Divine Bread and indifference to salvation, it is an evil to be combated

without respite, and with a zeal that should become the more intense in proportion to the outrage inflicted by such contempt upon the Heart of Him whose loving designs the priest professes to forward. A universal aloofness from daily Communion can never be viewed as a good state of things, nor even calmly acquiesced in. At best, it can be borne as being, it is true, a lesser misfortune or evil than profanation of the Sacred Bread; yet one that is to be pursued without a truce by means of illuminating instruction, zealous exhortation, and even by warnings as to the sad effects which follow from it. It is a case of recalling the command of St. Paul to Timothy: 'Preach the good word, be instant in season and out of season: reprove, entreat, rebuke in all patience and doctrine' Tim. iv, 2" (*Tesnière, "Pratique," p.* 49).

The difficulties raised about the burden of Confession have no value since the Pope has provided for this in his decrees. Nor need we consider the danger of routine further than to say that if we put any stress on this point we would all become pagans in the religious world and good-for-nothings in the civic realm. The objecting pastor would have to give up his daily Mass, his daily office, etc., upon the same score, viz., danger of routine. To conclude, we say that the pastor transgressed his jurisdiction and the curate should hear and obey the voice of the supreme pastor, the vicar of Christ.

XXV. USE OF STOMACH-PUMP BEFORE AND AFTER HOLY COMMUNION

The following interesting case appeared in the *Monitore ecclesiastico:* The priest Papyrius, afflicted with chronic stomach trouble, is directed by his physician to wash out his stomach every morning by means of a stomach-pump. He does this sometimes before, but more frequently after, Mass. The question is asked: Is the use of a stomach-pump permissible before or after Mass, *i. e.,* before or after holy Communion?

The stomach-pump is constructed of a rubber tube, which is lowered through the mouth into the stomach to flush it with water or other fluid. Attached to the tube is an arrangement by which the fluid and undigested food are brought up. Such a pump serves, therefore, chiefly the purpose of extracting undigested food from the stomach. Often the tube is lubricated with some kind of oil to facilitate the introduction.

With these facts in mind, we will take up the first question: Is the use of the stomach-pump permissible *before* holy Communion. The *jejunium naturale* is imperiled, either by particles of the oil with which the tube is greased, or through the fact that some of the water may be sucked up by the stomach. It is certain that any lubrication with oil must be omitted in order to preserve the *jejunium naturale,* and it can be omitted all the more easily as physicians do not consider such lubrication necessary. But is the *jejunium naturale* violated by the water introduced by the pump into the stomach? The *jejunium naturale* is broken in the opinion of theo-

logians under the following conditions: (1) *ut res sumpta habeat rationem cibi aut potus, i. e.,* it must be digestible; (2) *ut sumatur ab extrinseco.* Saliva or blood from nose, mouth or lungs may enter the stomach without interfering with the *jejunium;* (3) *ut sumatur per modum comestionis aut potationis* (*S. Alph. l. vi., n.* 280). In explaining this last condition Lemkuhl states explicitly that food and drink do not break the *jejunium naturale* if taken *aut per modum salivae, aut per modum aspirationis, aut per modum attractionis per nares* (*II. n.* 160). *Per modum salivae* means that something has been taken into the mouth for cleansing teeth or mouth, or for tasting, and, upon spitting it out, some of it remains. Even the Mass rubrics allow rinsing the mouth, even at the risk of a little water entering the stomach. (*De defectibus Missae tit.* 9, *n.* 3.) *Per modum aspirationis* means that gnats, dust, snow, are accidentally taken into the stomach by inhalation. *Per modum attractionis per nares:* it is not forbidden to take a pinch of snuff before holy Communion, even if accidently a particle of it should be swallowed. St. Alphonsus adds that even the chewing of tobacco (though extremely filthy) does not violate the *jejunium,* even if unintentionally some particles enter the stomach by getting mixed with the saliva. It is evident from all this that the Church does not prohibit food and drink to enter the stomach before holy Communion, but merely forbids it to be taken *per modum cibi et potus.* Lacroix explains this in the words: *Tum aliquid sumitur per modum comestionis vel potationis, si hoc quod trajicitur; et modus trajiciendi, sufficiat in morali aestimatione ut quis censeatur comedisse aut bibisse.* (*L. vi, P. i, n.* 554.) There is no doubt, then, that the stomach-pump may be used without violating the *jejunium,* for it cannot be asserted that by its application the patient eats or drinks.

The other question is asked: Is the use of the stomach-pump permissible immediately after holy Communion? To this question we must answer "No," for there is danger that the sacred species may be brought up with other matter and desecration would take place. It is true that the process of digestion begins as soon as the sacred species comes in contact with the saliva in the mouth. Nevertheless, the process is retarded in a weak stomach, where it takes place very slowly, and there should therefore be an interval of a half hour at least—under circumstances even a whole hour—before the stomach may be so treated without irreverence to the Blessed Sacrament. (*Capellman, Medicina Past.: ed. III. lat p.* 124.)

XXVI. EPILEPSY BEFORE ORDINATION

On August 14, 1893, the Chancery of Venice submitted the following case to Rome: Among the alumni who are to receive ordination as subdeacons there is one Antonio Saccordo, born 1872, who has distinguished himself in an especial manner by talent, piety, and proficiency in studies. However, he has suffered since early youth from nervous attacks which, according to season and other conditions, make their appearance with longer or shorter intervals. When seized by such an attack the patient suddenly halts for about a minute and in silence, restrained by an affliction of the nerves, without however falling to the floor; he feels the approach of attacks, and then quickly endeavors to take firm hold of a person or other support; he rapidly rallies of his own accord, and can then, without the aid of drugs or refreshments, proceed with his usual occupation.

These attacks are not accompanied by grinding of teeth, foaming, groaning or screaming, though there is at times slight trembling. As there seemed to be no serious affliction, the young man had been given the *Ordines minores;* but before bestowing subdeacon's orders, the ordinary desired the instructions of the Sacred Congregation. The advice of competent persons had been obtained, but their opinions varied. It is mentioned that the sufferer has for many years used a cold-water cure, but, apparently, without improvement. To this statement of facts was adduced the statement of a prominent physician, who stated it as his professional opinion that this alumnus may, without apprehension, be admitted to Holy Orders.

The S. C. answered *Pro nunc non expedire.* After two years, in 1895, the newly appointed Patriarch of Venice, Cardinal Sarto (now Pius X.) again applied to Rome, proposing that *ad cautelam* an assistant be given the Alumnus for holy Mass. Rome ordered that a new medical examination be made. It resulted favorably, and under date of September 12, 1896, the S. C. granted *Pro gratia, arbitrio et prudentia Emi Patriarchae, adhibitis cautelis sibi benevisis, facto verbo cum SSmo.*

This case shows how carefully, even rigidly, Rome proceeds in regard to irregularity.

A similar case occurred in the year 1866, under almost identical circumstances. An alumnus suffering from epilepsy had attacks every four or five months, either at night or about an hour after rising. According to physicians' opinion these attacks were not likely to occur during the day; moreover, they were not due to an organic trouble, but entirely the result of the unrest of mind from which the alumnus suffered at that time. Nevertheless, the S. C. replied to the first petition: *Pro nunc non expedire.* The following year the alumnus, endorsed by bishop and physician, appealed again to Rome and was again refused, with the instruction: *Dilata et recurrat post sex menses, exhibito documento etiam alterius medici ab episcopo deputandi.* The subsequent medical opinion was equally favorable, and, finally, under date of January 11, 1868, the answer came: *Pro gratia dispensationis et habilitationis, facto verbo cum SSmo.*

XXVII. CELEBRANS INDICE IMPEDITO

Father Alexius, an order priest, had the misfortune, on the first Sunday of Lent, to injure the index finger of his right hand so badly that the nail was entirely torn off. It was a matter of weeks, even months, before a new nail would form, and until then the finger had to remain bandaged. Father Alexius was about to resign himself to the sad necessity of abstaining from saying Mass, when the thought occurred to him: Is it really forbidden to use, in case of necessity, the middle finger in place of the index finger, in saying Mass? After some thought and recourse to manuals of Moral Theology, Father Alexius, with the approval of his local superior, continued to celebrate his daily Mass, the middle finger, not without difficulty, doing service in place of the index finger.

True, the rubrics explicitly require the priest, at holy Mass as well as in distributing holy Communion, to hold the form of bread invariably with thumb and index finger—*pollice et indice.* Nevertheless, the fact that this, as the convenient and natural way of handling, is prescribed, does not mean that holy Mass should be omitted rather than employ another finger. The rubrics prescribe many other motions in an exact manner; nevertheless, if on account of some hindrance on a particular occasion a certain motion could not be made in the exact way, one would without hesitation do the best one could.

Or, is there a particular significance in the use of the index finger, such as, for instance, in the fast before holy Communion, or a *ratio mystica,* as in mixing the wine with water? What particular significance could there be?

If it be objected that thumb and forefinger have been specially anointed for this purpose at ordination, it should be remembered that the whole palm of the hand is anointed together with the other fingers. The anointing of these two fingers is performed not as if they alone were anointed, but upon the thumb is begun the one and upon the index finger the other arm of the cross to be made upon the palm of the hand. Hence, it is hard to understand why St. Alphonsus and some others, who have in mind this supposedly special office of these two fingers, will not permit distribution of holy Communion with other fingers except in cases of *extreme necessity.*

Take the case of a deacon, for instance, none of his fingers are anointed, and yet on occasion of even slight need he may distribute holy Communion. Ballerini (*Opus theol. morale, tom. IV., p.* 640) says on this subject: *Alias quidem permittunt; ut laicus (in necessitate) deferat aut levet e terra, permittunt unrationabili ex causa petatur Eucharistia ab excommunicato vel peccatore, et nunc disputant de digito!*

To the objection *impedit exercitium ordinis, quidquid impedit ordinis susceptionem. Atqui qui debiles habet eos digitos, impeditur ab ordine suscipiendo,* the same author replies: *Resp.* (1) *N. A.; nam multa superveniunt sacerdoti, quae non impediunt exercitium, quae tamen impedivissent susceptionem.*

(2) *Aliter iudicandum est de impedimento antecedenti et perpetuo, quando honor divini cultus exigit, ut perfecti ac sine macula eligantur; aliter de accidentali, quod subsequatur.*

(3) *Falso supponitur, eandem habere gravitatem, quidquid praescribitur; neque enim eadem est necessitas eorum omnium, quae exiguntur. Ergo levior, interdum levissima causa excusat a quibusdam.*

These answers cover partly the objection of irregularity. In our case it is irregularity in the general sense, the prohibition to execute the *ordo* which one can either not perform at all, or not with propriety. Even St. Alphonsus here advises: *Continuat.* And Tournely observes: *Si quis careat indice poterit dispensationem obtinere.* And Palmieri holds (*Op. mor. tom. VII., p.* 375): *Nec videtur esse ulla difficultas in ea concedenda, cum digitus medius tantundem in actione sacra valeat praestare quod index.* Yes, more: *Quae ratio esse posset dubitandi, an huiusmodi sit vere irregularis; nec certus canon habetur.*

In fact, c. 7, *de corpore vitiatis,* refers to some one who lacks the thumb-nail, much needed for breaking the Host, and yet permits his *promotio ad sacerdotium,* provided the thumb is otherwise strong.

According to all this a dispensation, or special permission, to celebrate with the middle instead of the index finger is not even required. Even, though only the Pope can dispense from the rubrics of the Mass, the principle that may be applied here is: *Lex positiva non obligat cum incommodo proportionate gravi* (here also *mediocri*).

To this view a Roman decision seems to be opposed which Gardellini-Mühlbauer quotes under the head *Sacerdos digitis laborans.* A priest of the diocese of Treves injured his index finger so badly that it became forever useless for celebrating Mass. His bishop appealed to Rome for dispensation with an array of important reasons, such as the priest's worthiness, the prevailing lack of priests, etc., whereupon the Congregation granted: *Rescripsit pro gratia dispensationis et habilitationis iuxta votum Episcopi, facto verbo cum Sanctissimo* (26 Jan., 1861). That in this case the index finger was forever, and in our case only temporarily, unavailable, is for our question unimportant, the question before us, namely, whether

stante impedimento digiti indicis it be allowed to celebrate with the middle finger, without formal dispensation. That a dispensation has on some occasions been granted does not prove that such dispensation is required, nor the need of applying for it, since in numerous instances Rome is unnecessarily petitioned without always eliciting the familiar *Et amplius* (*ne proponatur*). And the fact that a permission is given by high authority does not mean that this permission could not have been granted by a lesser authority.

Concerning Father Alexius, he found, moreover, to his entire satisfaction, that *per communicationem privilegiorum* in his Order the local superior is *fer. II., post I. Dominicam Quadragesimae* authorized to grant dispensation *a quibusvis irregularitatibus in suis subditis.* The superior had given his consent that Sunday evening, without giving thought to this particular faculty; his intention continued *virtute* on Monday, and should a dispensation be required this would suffice completely, according to *quantum possum et tu indiges,* which intention, without doubt, prevailed here.

JOSEPH SCHELLAUF, S.J.

XXVIII. SHORTENING OF CONFESSIONS WHEN MANY PENITENTS ARE WAITING

(1) Father Anastasius, pastor of a large parish, has during Easter time on many days a large number of people at his confessional. It happens then that persons come to Confession, who, as Father Anastasius realizes, are in need of a General Confession. Father Anastasius considers that he has not time for this now, and he knows a way out. He makes with such persons an appointment when they are to come and make a General Confession, and for the present bids them awaken contrition, bestows absolution and dismisses them.

(2) Sophia, a woman of wealth and position, comes to Confession. To the question whether she had ever concealed a mortal sin in Confession, without having since made reparation, Sophia answers in the affirmative. Father Anastasius directs her to make good this wrong now by the required repetition of Confessions. Sophia objects that she cannot possibly stay longer in the Confessional, nor omit holy Communion, both *propter grave famae periculum,* because friends have come with her and are waiting. She promises, however, to come soon for a General Confession. Father Anastasius thereupon listens to the necessary *materia absolutionis* and absolves Sophia, as he would one seriously sick who for the time being cannot make a complete confession.

Father Anastasius submits his procedure in these cases to his confessor for approval. What is to be said to cases 1 and 2.

The confessor must say, as regards case 1, that Father Anastasius, who, on account of a great number of penitents, releases them

and himself from the obligation of material completeness of Confession, commits a grave sin. This is clear from the condemnation by Innocent XI. of the opinion: *Licet sacramentaliter absolvere dimidiate tantum confessos ratione magni concursus poenitentium, qualis verbi gratia potest contingere in die magnae alicuius festivitatis, aut indulgentiae.* It is true that in Father Anastasius' case Confessions at Easter time are concerned, not those on the occasion of a great festival, or Indulgence, to which the condemned proposition refers. But the prohibition has reference to the practise generally, and the great festival, or Indulgence, are merely quoted as examples of occasions upon which a great many Confessions may occur. The fact that a great number of penitents surround the confessional is not of itself sufficient reason to disturb the proper order of the tribunal of penance. According to the unanimous teaching of theologians there can excuse from the material integrity of Confession only a very (*omnino*) great and casual harm, that might arise out of the material completeness to either penitent, confessor, or a third person. A great number of penitents does not necessarily involve such harm for anybody. Some of these penitents may not be in need of Confession, others may be well able to go to Confession elsewhere, and the insistence upon material completeness would not cause them great harm. On the other hand, the habit of curtailing Confessions on such occasions, will put the confessor in danger of absolving insufficiently disposed penitents. Whenever theologians enumerate reasons that excuse from material completeness of Confession, they take it for granted that this danger is not encountered, and this is something which Father Anastasius seems to have ignored. There is no possible injury important enough to justify the absolution of a penitent not sufficiently disposed, and, as Segneri (*Confessore Istruito II.*) very correctly

remarks, it is far better that few are healed than that many are dealt with and not one healed. For this reason Father Anastasius, in our case, cannot excuse himself from the obligation to insist on the material completeness of Confession, *ob defectum temporis,* time was wanted by him only on account of the large number of waiting penitents; he can release himself from this duty still less because of the danger of absolving penitents not well disposed.

We will not maintain, however, that, with a throng of penitents waiting, the confessor is never allowed to prefer the interest of waiting penitents to the completeness of Confession. He will be permitted to follow this course in a case when the waiting penitents would be exposed to great harm. This is evident from the opinion of theologians dispensing with the material integrity of Confession. This opinion is not included in the condemned proposition. It is not declared that it is *never* allowed to curtail Confession when there is a large number of penitents, but that it is not allowed to do so merely on account of the great crowd, or, as Berrardi (*Prax. Conf. n.* 1048, *VII.*) states it: *Damnatio respicit casum, in quo confessarius propter dictum concursum passim dimidiat confessiones, audiendo dumtaxat unum vel alterum peccatum et illico dando absolutionem.* Nor is opposed to this opinion the admonition of St. Alphonsus to confessors in the event of a great crowd of penitents: *Non ei curae esse debet, quod alii poenitentes expectent, nam tunc confessarius non tenetur attendere ad bonum aliorum, sed tantum sui poenitentis; pro quo tantum ille tunc, non vero pro aliis rationem est Deo redditurus.*

This admonition has reference to the case when the required disposition is wanting in the penitent, and when it is the confessor's duty so to dispose him that he may be validly absolved. We are speaking here of the material integrity in the Confession of a peni-

tent who is well disposed. As a rule, it is also the duty of confessors to supply a deficiency in integrity, but this duty is neither so absolute nor so great as the former, because material integrity in the Confession of a well-disposed penitent is required not for valid, but for lawful absolution. There is, therefore, in our case not, as St. Alphonsus presumes in the passage cited, the good of one penitent opposed to the good of others, but, rather, the material integrity of the Confession opposed to the good of the waiting penitents, and hence our case is quite different from the one St. Alphonsus presupposes. Indeed, the holy Doctor teaches (*H. A. tr., XVI., n.* 30), that a penitent is excused from material integrity of Confession (and that the confessor is to take care of it) whenever there is to be feared from it great harm for the penitent or others. Hence, it is allowed beyond doubt to curtail the Confession, whenever, and to the extent in which, the completeness of Confession causes great harm to waiting penitents. An example of this is found in Lehmkuhl, *Vol. II., n.* 329. There can be dispute only of the required extent of the harm that would excuse.

To resume the case of Father Anastasius, our opinion follows: If the time for Easter Communion draws to an end and Father Anastasius knows that it will be impossible for the waiting penitents to comply elsewhere, or later, with the precept, then we consider that for this reason it is permissible to absolve a well-disposed penitent with neglect of the material completeness of the Confession, provided, of course, that absolution is necessary to this penitent. The obligation to fulfil the commandment makes absolution so necessary to this penitent that it would be lawful to absolve him even upon incomplete confession. That the same necessity is present in the case of the waiting penitents supplies the *defectus temporis* which excuses from the material completeness of the Con-

fession in the individual case. It cannot be objected that the confessor might extend the Easter time for the waiting penitents, for this might be objected also regarding the individual penitent, which the theologians, however, omit to do.

Nevertheless, we believe that a case where it would for this reason be allowed to neglect the material completeness of the Confession will seldom occur, because the confessor cannot easily have knowledge of the condition of the waiting penitents, and, moreover, particularly at Easter time there must many penitents be supposed wanting in the proper disposition. For this reason it is at such time better to tarry than to hurry.

In regard to case 2, the confessor will approve of Father Anastasius' opinion that Sophia may, in this case, be absolved after a materially imperfect confession. The opinion of Father Anastasius is obviously based on the teaching of theologians, and Segneri solves the same case (*l. c.*) in the same manner. Father Anastasius erred, however, in concluding that, because Sophia was excused from making a complete confession, she was likewise excused from accusation of recent sins further than what was sufficient for the *materia absolutionis,* though she could confess these *sine gravi famae periculo.* This certainly is not correct. The obligation of material integrity of the Confession refers not *modo indiviso* upon the totality of the grievous sins committed by the penitent, but *modo diviso* upon the individual ones. It follows that even if the penitent for some reason is excused from the accusation of some particular sins, nevertheless, the obligation of the material integrity of the Confession in regard to other grievous sins committed continues. For this reason Berardi says in the passage quoted: *Curandum, ut quanto minus fieri possit, integritas materialis detrimentum patiatur.* And Segneri, in a case identical with that of Father Anas-

tasius, does not state it as the rule to require only the necessary *materia absolutionis* and then absolve, but to require of the penitent the accusation of as many grievous sins as is possible in the available time and only then to absolve. So should Father Anastasius have acted in the case of Sophia. Therefore, he was not justified in dealing with Sophia as with "one grievously sick, who, for the time being, cannot make a complete confession." In the case of a person grievously sick there is physical or moral impossibility of speaking, which is not to that extent the case with Sophia. While she stated that "she could not possibly remain at this time longer in the confessional," she evidently meant the length of time needed for repetition of former Confessions.

We are finally of the opinion that Father Anastasius should have considered it his duty to make use of the time which evidently was available to assist this willing penitent in a Confession, which, though perhaps not in the opinion of Sophia, but according to the requirements of the Sacrament of Penance, would have been a complete one.

XXIX. DOUBTFUL RESTITUTION; DECISION OF THE CONFESSOR; CONSEQUENCES TO THE CONFESSOR

A penitent confessed: "Many years ago I stole a considerable sum of money from a certain man, but some time after I sent it back to him through the mail, by ordinary letter. At the particular post office from which this letter should have been delivered there occurred for quite a while embezzlements of letters containing money and valuables, and this went on at the time I sent my letter. In the matter of my restitution may I let the matter rest, or am I still under obligation in this respect?"

The confessor replied, after some thought, and not without considerable fear of erring in his judgment, that there was no further obligation, because the embezzling of this money need not, and could not, be supposed. Since, furthermore, the penitent had acted in good faith, there would still less be any reason to impose further obligation upon him. What is to be thought of this decision of the confessor, and what are the consequences for him?

(1) Whether this restitution money really reached its rightful owner must be considered as very doubtful, in the light of the penitent's statement. Since there is, at best, only little (moral) guarantee that money entrusted in this manner to the mail reaches its destination, doubts are all the more justified in our case. Whatever theologians say about proceeding *in dubio de restitutione facta,* it is certain that it is, first of all, the duty (if it is not preferred to make the restitution once more without any fuss) to remove the doubt as far as possible. The penitent, therefore, should institute either himself or through another—the confessor, perhaps—in-

quiries to ascertain the facts, if possible. If he will not, or cannot do this, then his responsibility for the sum continues, because the certain obligation (to make restitution) is not discharged by uncertain fulfilment, especially as it is a matter of a *restitutio ex delicto debita,* and also because the uncertainty originated from undeniably objective, even if subjectively not culpable, negligence of the debtor. For, even if he acted in good faith, he has, according to the comment of St. Alphonsus (*l.* 111, *No.* 705) on a similar case, momentarily preserved his own conscience from sin, but not complied with his objective duty. This shows how, and in what respect, the confessor has judged wrongly.

(2) If the confessor's fear of erring was not the result of a certain anxiety, which at times may remain even after reason has clearly indicated the correct way, but rather resulted from a consciousness of doubt as to the right thing to do, it would have been his duty either to postpone the decision, or to send the penitent to another confessor, or to resort to the other means recommended by theologians under such circumstances. If the confessor acted though in doubt, he failed also subjectively and failed grievously, because it concerned a *materia gravis.* His fault will be lessened, if, as is probable, momentary confusion and concern made calm deliberation difficult and interfered with procedure according to the rules; indeed, from this point of view the conditions may even remove all guilt. On the other hand, however, such conditions would not excuse if the confessor's anxiety and false decision were due to culpable neglect of study.

(3) Since the confessor, as has been proved, erred in his decision, he is obliged to repair the fault as far as he can, according to the rules that apply here. It is superfluous to cite these rules here; but a state of affairs which is likely to occur may here be referred to.

What obligation does this priest incur if the penitent does not return, if, moreover, the person to whom restitution is due, and also the amount of the sum involved, are unknown to him? We reply: If the confessor has in his decision not subjectively failed, or only in a venial manner, then, according to the general and positive teaching of Moralists, he is under no obligation in regard to restitution. If, however, he has (subjectively) grievously failed, there ensues from the teachings of theologians on *iniusta damnificatio, cooperatio,* and *incerta debita,* the following: 1. The priest is bound to make restitution, and, 2. the restitution is to be made *pauperibus vel causae piae.* Regarding the amount to be thus expended we may, on the principle *non est imponenda obligatio, ubi de ea non certo constat,* accept the minimum consistent with a *materia gravis* (*considerable* stated the accusation). For the sake of security, however, and to satisfy the conscience, it would be advisable in such a case to have recourse to the Apostolic See (Penitentiary); Rome's decisions in such things are not only just, but lenient as well.

AMBR. RUNGGALDIER, O.F.M.

XXX. AN INCOMPLETE, YET VALID CONFESSION: EXTREME UNCTION NOT REPEATED AFTER INVALID RECEPTION

The laborer Stephen, hardly thirty years of age and not married, is a consumptive and has spent the last eighteen months in a hospital. In his religion he is indifferent, faultfinding, supercilious, and sceptical. His morality, especially, is in bad shape, as may be gathered from his talk. In the hospital, however, he has been receiving the Sacraments every month, not of his own accord, yet without remonstrance whenever the sister in charge asked him to prepare himself for Confession. The confessor at the hospital, however, enjoys not his full confidence, but another, befriended, priest has it. To ask for the latter, he fears, would cause comment, and hence he omits this until he feels his last hour approaching. Then he has this other priest summoned during the night, as he positively demands to confess to him and to none other. At this last Confession he accuses himself of having concealed in previous Confessions a grave theft; he is just able to tell how large a sum of money he took, and that in more than fifteen Confessions he has not accused himself of it, but does not make an attempt to repeat the invalid Confessions because he is ignorant of this requirement, and under existing conditions this reparation would be too much for his strength. He has previously received Extreme Unction, though, of course, just as sacrilegiously and invalidly as previous absolutions and Communions. The question is how this sick man should have been treated in his last moments.

Answer.—He should have been treated in no other manner than he was treated by the confessor, to whom he gave his confidence.

In view of the suffering and anxiety of his last hour, he was left in good faith that he need only accuse himself of the theft concealed until then; he was not reminded of the obligation to repeat all his invalid Confessions; the confessor, however, recalled to the patient briefly some of his sins which had become known to this priest outside of Confession, and directed that he should include in this Confession all these sins, and also all faults in former Confessions and Communions, every thought, word and act against the sixth commandment, neglect of holy Mass, transgressions of the commandment of fasts and abstinence, etc., and to repent of them sincerely and heartily. The priest then recited for him the act of Contrition in the form of vigorous ejaculatory prayers, and asked him in conclusion if he really meant that which he had just repeated; if he really was sorry for having so often and so grievously offended God. Then he inspired the patient with confidence in the merits of Jesus Christ, and the mercy of God, gave him absolution, and administered holy Communion, but not Extreme Unction. The priest acted upon the principle that a more complete Confession was under such circumstances too difficult, even impossible, and that on account of these circumstances it was advisable not to disturb the penitent in his good faith that he need not confess anything more; that, indeed, it would be injudicious and dangerous to call the patient's attention to the requirements of repeating the invalid Confessions or even *hic et nunc* to demand such difficult, indeed impossible, task. Extreme Unction, although unworthily received, the priest holds, cannot be repeated in the same danger of death brought on by disease, that the Extreme Unction received some days ago will now, since the recipient through improved sentiments removed the *obex gratiae,* and received absolution, yet produce its effects.

The principle applied in the matter of the confession is expressed in the following quotation from De Lugo (*De Sacr. Poen. Disp.* 16, *Sec.* 14, *n.* 594): "As in the examination of conscience, only the deliberation suited to human capability is required, and as this deliberation should not be such as to arouse reluctance or disgust in regard to this holy Sacrament, it is evident that a less intelligible and positive statement may be accepted from a person who, in consequence either of illness, or of the multitude of his sins, or for some other cause (*vel propter incapacitatem vel propter morbum vel propter peccatorum multitudinem vel aliam ob causam*) would find it too difficult to prepare an exact statement. A person, for instance, who is to confess the sins of a whole life, a life passed in sin, would find it extremely difficult to make an examination as exact as another may easily make at his monthly Confession; indeed, it would be such a hardship to the former as would be likely to render Confession distasteful and obnoxious. This is the reason why we require a less precise and exact statement from public sinners and persons of that kind, than if a person, for instance, had only lived in sin for a month, or even less.

The principle ruling in the matter of Extreme Unction is stated in the following: *Quaeritur, an istud sacramentum (extremae unctionis) possit esse validum et informe, ita ut recedente fictione conferat suum effectum? Respondeo affirmative cum communi Doctorum. Ratio est: quia est sacramentum initerabile, saltem pro certo tempore nempe durante eodem morbo seu statu morbi, ut supra in artic.* 3. *n.* 8. *advertimus; adeoque, si sine aliquo defectu substantiali et cum solo obice sive defectu dispositionis ex parte subjecti requisitae fuit receptum, postea vero obex removeatur ponaturque sufficiens dispositio, effectum suum producit, ne infirmus fructu illius totalier privetur. Vide Castropalaum n.* 14, *Salmanticenses*

qu. 3. *Mezger tract.* 19. *disp.* 50. a. 2. n. 4, *etc.* (*Babenstuber, De Extr. Unct. art.* 5. *n.* 5.) But when is there a *sufficiens dispositio?* "*Si infirmus bona fide vel sensibus destitutus sacramentum recipit in mortali, sufficit attritio; si autem mala fide suscepti* (as in our case), *requiritur contritio vel confessio, ad se rite disponendum.*" (*Aertnys, Theol. Moral. II. n.* 354.)

BERNARD DEPPE.

XXXI. RESTITUTION BY MEMBERS OF RELIGIOUS ORDERS

On page 153 of this volume a case is discussed in which a confessor under prevailing conditions was considered liable for restitution. What is to be said if this confessor is a member of a religious order? Does this liability still rest with him? The answer to this question depends upon the rule applying to restitution on part of members of religious orders, and this rule may be briefly discussed here. We shall have in mind only members of male orders, and only such, in fact, who are solemnly professed. It will further be premised that it is a matter of restitution for an unjust damage occurring *after* solemn vows have been taken.

I. Religious orders are in the Church of God, in regard to their nature, their interior and exterior work, an institution of such prominence that in promoting them there is served a *causa pia* in the best sense of the word. The best possible manner for an individual to promote this cause consists, no doubt, in choosing religious life for a vocation, devoting to it all the powers of body and soul, and by taking perpetual vows to become forever united to the Order. Whenever, therefore, the rules about restitution prescribe a *causa pia,* or *pauperes,* as the recipients of restitution, a religious complies to any such obligation perfectly by serving his order faithfully and zealously, and he thus cannot be bound to anything further. This the theologians teach in regard to the *debita incerta contracta ante ingressum in religionem* (*professionem*), and it would hold *ex paritate rationis* in our case.

II. The case is different, if restitution is to be made to a certain person. By the vow of poverty the religious has renounced all his

right to any disposition whatsoever about money or possessions. Unless in extraordinary cases Papal dispensation, or precept, direct otherwise, he is unable of possessing property; anything he may have or acquire belongs to the convent, if it be privileged of possessing property, or to those who exercise the right of ownership over the possessions of the convent. Thus, without money and property, the religious is not in a position to make restitution; he is, because, and inasmuch as, thus prevented, relieved also of the obligation. That the convent need not assume any such obligation for him is obvious. It must be kept in mind, however, that the obligation of restitution is not of itself cancelled by the vow of poverty, as some other contract made by a religious may be invalid on account of his incapability to make dispositions in matters of possessions.

The obligation of restitution does prevail for the religious, and it becomes effective as soon as the obstacles opposing its fulfilment disappear, for instance, if through dispensation or secularization, the vow of poverty is wholly or partially abrogated. Furthermore, a member who has disposition over a *peculium*, which, without imposing an uncustomary or unseemly demand upon the convent, can be employed for restitution, can hardly escape the obligation.

III. A few other possible cases may here be mentioned. 1. A religious, *i. e.*, the convent for this religious, receives by legacy, or in a similar way, an amount far surpassing the material benefit which the convent renders to this member. Is the convent obliged to employ the surplus for a restitution that may be incumbent upon this religious? The majority of theologians* answer affirmatively if the obligation dates from the time before entry into the order

*Gury-Ballerini (I, 718) holds the contrary view; but compare Lehmkuhl (I, 1895) and the facts there cited in support of his contention.

(more correctly before solemn profession). *Quia bona illa ad monasterium transeunt cum illo onere, quod illis annexum fuisset, si in dominio religiosi mansissent* (Lehmkuhl I, 1039). Under the condition premised in our case, that the act involving restitution took place after the solemn vows, such an obligation on part of the convent does not appear to result. Through profession the religious transfers all title to property to the convent, forever, in a manner valid before God, the Church, and often before secular authorities; this takes place in a perfect manner, if the religious at profession is free from debt; it is not of itself possible to a religious burdened with a debt, if profession is not capable of cancelling the claims of a third person. Hence, the difference in the two instances. The laws of equity frequently impose requirements for which the word of the law does not provide.

2. Is the religious obliged, with the permission of his superior, to undertake work by the proceeds of which he will be enabled to make restitution? This must *ex paritate rationis* be affirmed upon the principles above stated, and according to the teaching of theologians concerning religious whose debts antedate their entry into the order. It is regarded as a matter of course by Suarez (*De Virtute et Statu Religionis, tom. III. lib. VI.* 10, 8). Occupations unusual and unbefitting for the calling of a religious are, of course, excluded; and on this account the question is not of great practical significance in our days.

3. In an order there is a certain number of holy Masses placed at the disposal of its members, to apply at pleasure. Out of the stipends for such Masses a religious may and should make restitution; is he then obliged to make efforts to gain stipends? Discrimination is here in order. If the application of a certain number of Masses is placed at the disposal of members for the purpose of

applying the fruits to relations, friends, etc., then a religious is not obliged to apply the Masses for earning a stipend, even if the superior allows this. For, despite the obligation of restitution, he may live according to the aim and purpose which are intended by the precepts of his order.

If, however, the superior by such a privilege wishes to give the members an opportunity to obtain some money for individual use, a kind of *peculium* therefore, the solution is more difficult.

On the one hand there is the obligation of restitution which he may discharge without interfering with dignity or rule; on the other hand, the question arises, can the priest be obliged to undertake a spiritual act with the purpose of earning by its performance, or on the occasion, money? The answer it seems at first sight would have to be in the negative, because otherwise there would be obligation to an act that manifestly is simony. And yet the priest may, in connection with Mass, earn money without committing simony. The negative answer seems, nevertheless, to us the more probable; for to say holy Mass in a certain intention, with the sole idea, of gaining money is certainly simony; the acquisition of money therefore cannot be made the reason for undertaking this or any other sacred action.

4. If the religious cannot make material restitution, but can apply holy Masses to the injured, thus benefiting him in a spiritual way, which the faithful often gladly accept as substitute for temporal damage, is he obliged to do so? No, compensating justice does not require restitution with goods of another kind, when one cannot make restitution with goods of the same kind, at least not without the decision of judge or superior. If Müller, with Cardinal De Lugo (II, p. 450), holds, in case restitution by material means cannot be made, *injungendum tamen erit debitori, ut saltem pro*

creditore oret vel orari faciat, et offerri aliqua bona opera, ut creditor eo modo, quo possit, aliquid pro suo debito lucretur, there is, as follows from the word *injungendum,* not reference to obligation already present, but of one imposed (by the confessor, perhaps). It is only of such an obligation that Kresslinger speaks in *Addit. ad Theol. Moral a Reiffenstuel exaratam, tom IV. post* 106 *add. II.* and Elbel, *De Restitutione, conf.* 12, 345. La Croix is more exacting (*lib.* III, *p.* 2, *n.* 425). However, the religious serves a *causa pia* (above 1), and his labors and merits are of an especial benefit to the Church and her faithful, provided he is a faithful member, so that there cannot well be question of any further obligation, such as offering good works or holy Masses. The confessor, of course, will find it advisable under circumstances to impose conditions beyond those that would just comply with the requirement.

AMBROSE RUNGGALDIER, O.F.M.

XXXII. FALSE TEETH AND HOLY COMMUNION

A priest is called to a sick person, who, after making Confession, receives the Viaticum. The patient immediately shows violent agitation, pointing his finger to the inside of his mouth. The priest looks there, and, to his horror, sees that to the rubber plate in the roof of the mouth of the patient the Viaticum sticks like glued. It is a well-known fact that it is very difficult even for a person in good health to loosen with the tongue the sacred species from such a rubber plate, often a moistening with some liquid is required to effect detaching. Our patient, in his weakened condition, could not use the tongue to loosen the Viaticum from the plate, and the priest decided to let a member of the family carefully remove from the patient's mouth the plate, which he then immersed in a bowl of water, then, after the sacred species had become separated from the plate, he washed the plate in the same water, took the entire contents of the bowl home and put it into the sacrarium, then returned to the sick man, and gave him holy Communion once more; the sick man, now relieved of the false teeth, swallowed the sacred species without difficulty. Did the priest act correctly?

In the procedure of the priest in this case may be seen his confusion, and it cannot be recommended for imitation; it was neither practical nor correct. It was at all events unnecessary to go home and get a new species. He should have saved this trouble, as well as the comment which may have been excited by his repeated visit. The simplest way would have been to remove the sacred Host by means of the finger, or with the aid of a knife, from the plate, to place it with a little water in a clean vessel (or spoon) and give

water and Host at once to the patient to drink. Thereupon he should have washed rubber plate, utensil and finger in the same vasculum, and this ablutio should also have been given to the patient to drink.

The proceeding was, moreover, incorrect; it is not permissible to handle the sacred species in the way he did, and to place the same immediately in the sacrarium.

As the decomposition of the sacred species in so short a time cannot be supposed, and is at the very least doubtful, he should have placed the vasculum in the tabernacle, and only after the lapse of at least a few days might have placed the contents in the sacrarium.

Dr. John Ackerl.

XXXIII. SHORTENING OF CONFESSION TO SAVE A PENITENT'S REPUTATION

The Confession of Cajus is being so protracted that bystanders must come to the conclusion that he has committed many sins of a complicated nature. To save him from this danger to his good name the confessor, Father Levis, tells Cajus: "You have now confessed enough sins; make the intention that all your other sins be included in this Confession, awaken contrition and good resolution, and I will now give you absolution, as people may otherwise find your long stay here suspicious." What is to be said about this view and practise of Father Levis? How should the penitent have been dealt with?

1. Without any doubt whatever Father Levis's views and practise are lax, erroneous and detrimental. He imagines, of course, that he is taking this course upon a right principle, but he applies the same wrongly. It is true that defamation before others, to which the material integrity of the Confession would expose a penitent, is sufficient reason in order to content one's self, *hic et nunc*, with the required formal integrity, reserving obligation and intention to confess later, in the following Confession, any grievous sins not now confessed. There is presumed also the necessity not to postpone the Confession altogether. (*St. Alphonsus Theolog. Mor.* 1. *VI.* 484, 485.) As an example, let us suppose the case that a sick man who has confessed for the reception of holy Viaticum, has made a sacrilegious Confession, and then asks the priest who brings the holy Viaticum, to hear his Confession once more, intending to make this a General Confession, that would take very long. To prevent

unavoidable injury to the good name of the penitent, the confessor should in this case listen to a few sins, and give absolution after admonishing the sick man to attend to the completion of his Confession later on *pro posse.*

This correct doctrine and prudent practise Father Levis applies in a lax, erroneous, and pernicious way. St. Alphonsus says (*l. c. n.* 595): *Nec exceptio (integritatis materialis) admitti potest, si ob prolixitatem confessionis alii facile suspicarentur poenitentem multis esse culpis gravatum.*

The opposite view carried out consistently would frustrate to a great extent the Divine command of completeness of Confession, for the reason especially, that Father Levis neither acknowledged nor urged the obligation to make up the deficiency in the following Confession, and thus just the greatest and most careless of sinners would comply least to the Divine command. There would, furthermore, be no fixed rule at what moment the confessor might stop a confession of sins, for the duration of Confessions differs greatly, and one cannot say just at what moment a just suspicion of bystanders might begin to be excited. Again, such practise would violate seriously the most important office of the confessor, the one of physician of souls, also of teacher and judge, and often and easily it might occur that just such sins would not be confessed on account of which the confessor would refuse absolution, or would give it only upon certain conditions, or which at least would require earnest exhortation and advice. Penitents might even with intention reserve such sins for the end of their Confession, hoping of being dispensed from their mention. Finally, this practise would promote in many penitents carelessness in sinning.

It will, therefore, not be permissible to eliminate for Cajus a danger to his good name at the cost of the necessary completeness

of Confession. But may and should there be no consideration of a danger to good reputation under such circumstances? Yes, there should be, in as far as the necessary completeness of Confession may be preserved; and this may be done in two ways: either by curtailing the Confession, on part of penitent and confessor, in all not essential things. Or, the Confession might be divided by directing the penitent, and stating the reason for it, to retire for a little while and then return at a suitable moment, to complete the Confession or to receive instructions and advice. Indeed, one might in such case, the necessary completeness of Confession presumed, for greater security grant absolution immediately, with the intention afterwards, as explained, to supplement what the office of physician of souls directs in this case, for this is the duty of the confessor no less than solicitude for material completeness of a Confession, and certainly belongs to the salutary completeness of the Sacrament of Penance. In conclusion it should be kept in view for the guidance of confessors that it is, first of all, necessary to do all that which the Sacrament requires and which is necessary and salutary for the welfare of the penitent's soul, and only then discretion and charity, in everything that will facilitate the reception of the Sacrament of Penance, may claim consideration, to avoid and eliminate anything that would make it distasteful and difficult.

J. P. Arnoldi, C.SS.R.

XXXIV. PERFECT CONTRITION

(1) Is perfect contrition combined with the resolution to confess, *only in case of necessity* a valid substitute for the Sacrament of Penance?

(2) Must the resolution to confess, the *votum Sacramenti,* be expressly joined to the act of contrition, to make the *contritio* efface mortal sin?

(3) Must the resolution to confess, joined to perfect contrition, include the intention of one going to Confession *as soon as possible?*

Those who have searched theological handbooks and commentaries on the Catechism for information about perfect contrition will not have found uniform nor precise and plain answers to these three questions. And yet it is obvious that just about these three questions there should be no doubt whatsoever.

Ad. 1. It is taught generally that perfect contrition effaces mortal sin in case of necessity; *i. e.,* in the case that some one is in the danger of death and a priest not there to whom he might confess. Is this correct? Is the efficacy of perfect contrition restricted to the case of necessity? The Church teaches otherwise. The Council of Trent speaks not of such case of necessity, but teaches generally that (*sess. XIV.,* c. 4) the *contritio caritate perfecta* reconciles man again with God, *priusquam hoc sacramentum* (*scil. poenitentiae*) *actu suscipiatur.* Therefore, in all cases, whether there is danger of death or not, at all times, and in all situations of human life, those in mortal sin may regain through perfect contrition the state of grace even before Confession. But how about the *votum sacramenti,* the resolution to confess?

Ad. 2. The Tridentine teaches (*l. c.*) that without this *votum sacramenti* the *contritio* has no such power to efface sin. But does the Tridentine require that this *votum* be expressly made (*explicite*), or is it sufficient if the *votum* is *implicite* included in the contrition? According to the literal meaning of the Tridentine the latter suffices. *Sancta synodus docet . . . ipsam nihilominus reconciliationem ipsi contritioni sine sacramenti voto, quod in illa includitur, non esse adscribendam.* To this St. Alphonsus remarks in his *Theologia Moralis, in Tract. de poenit. cap.* 1, *n.* 437, *de contrit: quod in alio includitur implicitum est, non explicitum.* That a *votum confessionis* be made expressly and *explicite* in awakening perfect contrition, is, according to the opinion of St. Alphonsus, not required for the reason also: *quia illi, qui habet notitiam confessionis, non est necesse, ut dum conteritur, confessionis recordetur, sed sufficit, ut illam non excludat.*

Every Christian, however, has this *notitia confessionis,* and perfect contrition, therefore, suffices for the forgiveness of mortal sin, even if there is no explicit thought of confessing. Perfect contrition would lose its power of effacing mortal sin only then if the sinner had the explicit intention *not* to confess his sin, but to content himself with an act of perfect contrition. For this reason we hold with Lehmkuhl (*Theol. Mor. tom. II., n.* 279): *sufficit illud votum sacramenti, quod eo ipso existit, quod aliquis actum perfectae contritionis seu caritatis elicit.* And this indicates the answer to our third question.

Ad. 3. We answer in the words of Lehmkuhl, *l. c.: Votum sacramenti non necessario continet propositum illud quam primum suscipiendi.* What does it really mean: to go to Confession as soon as possible? Can this not be done almost any day, or at least every Saturday or Sunday, by many of those who commit mortal sins?

Were this *propositum* required with the act of perfect contrition, then notwithstanding perfect contrition many would remain in mortal sin, because they do not desire to confess as soon as possible. If Lehmkuhl's *dictum* contains the Church's teaching, then there can be no doubt that perfect contrition will efface the mortal sins even of a Christian who confesses only once a year, in compliance with the ecclesiastical precept, even though he may commit these sins almost a year before Confession, but is resolved to confess these sins when going to Confession next Easter time. It will not do, therefore, to tell people that they must go to Confession immediately upon committing mortal sin, it will be more correct to tell them, in sermons and instructions, that if someone has committed mortal sin, he should not hesitate to awaken perfect contrition, and through perfect contrition he will regain the state of grace; that it will be necessary, nevertheless, to confess this sin when next going to Confession. This is ecclesiastically correct and it suffices for the Christian who has had the misfortune to sin grievously. Nor is it particularly difficult for a well-disposed Christian, who prays for this grace, to make an act of perfect contrition.

Whether, notwithstanding all this, an early Confession should not be advised, after mortal sin has been committed, is quite another matter. *In praxi* the priest will often have to advise early Confession, because one or the other may not be capable of a *contritio* and may content himself with an *attritio,* which only cleanses from grievous sins in connection with absolution.

Dr. Späth.

XXXV. THE OFFICE OF THE FIRST MASS

The questions are asked: (1) Is a newly ordained priest allowed to take for his first Mass a votive office (with corresponding color) if his first Mass is celebrated on a Sunday *per annum,* on which the office is *de ea* and the green color is prescribed? Or must he take the Mass of the day, with vestments of green color, or, if such are not available for those assisting, vestments of gold cloth? (2) If a votive Mass is allowable, which one should the newly ordained priest choose?

Ad. 1. A first Mass is not privileged as regards the office or the rite. It offers no sufficient reason for the celebration of a *Missa votiva solemnis* (*pro re gravi, vel publica ecclesiae causa*), which would even require assignment or permission by the bishop in the individual case. The newly ordained may, therefore, take a votive only on a day which admits of a *Missa votiva privata,* for which the celebration of a first Mass would be a *rationabilis causa.* In this case, however, the *ritus Missae votivae privatae* must be completely employed, whether the Mass be read or sung, and whether celebrated with or without assistance, therefore *sine Gloria* (unless the votive Mass as such has it, as *S. Maria in Sabb., Ss. Angeli*), *sine Credo, cum tribus saltem Orationibus,* and the chant *in tono Missae ferialis,* which for a solemn first Mass *cum magno apparatu et concursu populi* would hardly be desirable. The color of the vestments must, of course, correspond to the Mass *sive de die sive votivae.* It is regarded as permissible to take vestments of gold cloth, in place of white, red or green, *ex auro contexta,* but on

no account *ex tela serica aut alia flavi coloris materia confecta* (*Cf. de Herdt, S. Liturg. Praxis, tom. I., n.* 147).

This decides the first question, and under all circumstances the newly ordained has to take the *Missa de Dominica occurenti,* with all orations prescribed by rubrics and ordinary; if the *ordo* permits 3. *Oratio ad libitum;* then the *Oratio pro seipso Sacerdote* (*n.* 20, *inter Orationes diversas*) recommends itself for use. The vestments should be of green color, but may be replaced by such of gold cloth (*ex auro contexta*).

Ad. 2. This question is therefore dropped in our case. If, however, a newly ordained priest celebrates first Mass on a day that permits of a *Missa Votiva privata,* and he would say a votive Mass (at all events *ritu Missae votivae privatae*) rather than the Mass of the day, then he has the choice of any votive Mass. To be recommended in such case are the *Missa de Ss. Trinitate, addita Oratione Deus cujus misericordiae,* or, *de Spiritu St.,* or, *de S. S. Corde Jesus,* or, *de B. Maria V.*

The newly ordained priest will, however, do best to begin with his first holy Mass a strict adherence to the ecclesiastical precepts respecting the office of the day, and avoid everything unusual.

Prof. Joseph Kobler.

XXXVI. A PENITENT'S RECOURSE TO THE SACRED PENITENTIARY

According to the decision of the holy Penitentiary of November 7, 1888 (*ad. VII.*), a confessor who, as missionary, for instance, has not the opportunity of again meeting a certain penitent who has fallen under one of the censures reserved to the Pope, may exact the penitent's promise to write to Rome himself. Already prior to this the holy Penitentiary had decreed "a penitent is not required to have recourse through the confessor who absolved him from the censure, but may comply with this obligation through another confessor, or, for important and sufficient reason, may write himself to Rome under a fictitious name" (May 28, 1888).

The decisions are plain. Is therewith every practical difficulty removed? It appears to us that a difficulty of a particular kind still remains. The penitent, after having confessed to a strange confessor, must present himself subsequently again to his regular confessor, or at least to a priest who knows him. Possibly this penitent had been culpably silent about that sin in previous Confessions, until at last an opportunity presented itself to confess it to a strange priest. How happy he is to receive at last absolution! But within a month's time he has to write to Rome, and to whom may he intrust the answer, since the priest to whom he opened his heart, through whom he obtained forgiveness of his sins, will depart from the place the very next day? The answer of the Sacred Penitentiary will, as customary, bear the subscription: *Dilecto in Christo confessario ab oratore electo vel eligendo*, etc. There is yet another hitch. If the penitent writes under an assumed name, how will the answer

reach him? The penitent in his letter must speak of himself as a third person: "Titius, fallen under the censure of —— has been absolved on condition of writing to Rome within a month." Another permissible way to apply to Rome under assumed name is, as the Sacred Penitentiary has explained, to let the strange priest make the application, the penitent to make known to him his address. But is it not embarrassing for the penitent to give his address to the confessor and does not the difficulty remain, the solution of which is here attempted, inasmuch as the answer is almost always to be communicated in the *actus sacramentalis confessionis?*

There is only one means of removing this difficulty, and that is to have the Sacred Penitentiary give the answer *in forma gratiosa,* and not, as usually, *in forma commissaria; i. e.,* to have it prescribe what is necessary, instead of granting to a confessor the power to prescribe this. Instead of writing: *Sacra Poenitentiaria—facultatem concedit dispensandi—absolvendi—prorogandi*—it writes: *dispensat, absolvit, prorogat.* That this is feasible there can be no doubt. Absolution from censures may be given to one absent and in writing, and the enumeration of obligations to be fulfilled (to render satisfaction to the injured party, to burn the books of the sect, to inform the complex of the invalidity of absolutions given, etc.) makes in writing a much deeper impression. There are known to us several cases in which the Sacred Penitentiary has answered in *forma gratiosa.* Thus once *prorogando sacerdoti alicui jus ad retinendum officium confessarii.* Though the confessor had applied, he submitted certain circumstances which made an answer *in forma gratiosa* desirable. The answer came to this confessor who, by arrangement with the penitent, forwarded it to him through a third person without knowing his name. In another case a penitent himself obtained a rescript of this kind.

It is better, in general, to let the confessor write to the Sacred Penitentiary. The latter prefers to address its instructions to him. If, however, the confessor either cannot, or will not, write, or if there are other important reasons, the penitent may himself apply to Rome. Just in which cases he may receive an answer *in forma gratiosa* is a matter for the decision of the Sacred Penitentiary. At any event, he will not receive the answer in this form unless he specially petitions for it and states his reasons.

AUGUSTINE ARNDT, S.J.

XXXVII. DOES THE PERFORMANCE OF CRANIOTOMY INCUR EXCOMMUNICATION?

A physician confesses that he has frequently resorted to craniotomy to save the life of a mother. He adds that in his previous Confession he had been warned that craniotomy is prohibited under penalty of excommunication, but that he could not see its unlawfulness in case of necessity. How is this physician to be dealt with?

Whereas formerly some theologians, such as Ballerini and Avanzini, held that in a case of utmost necessity craniotomy might be allowed, this view has now, after repeated decisions of the Holy Office, been discarded. As early as May 28, 1884, the Holy Office answered to a query of Archbishop Caverot, of Lyons, with the direction: *Tuto doceri non posse in scholis catholicis, licitam esse operationem chirurgicam quam Craniotomiam appellant.* This decision created a great stir and much theological dispute. It was asserted that, craniotomy being a dangerous thing, Rome had intended in this decision to discourage the view that this operation were generally permitted, and that its *abuse* was chiefly aimed at by the prohibition. Especially was this view held by some professors at the University of Lille. The Archbishop of Cambrai, within whose jurisdiction this university is situated, therefore, proceeded to submit the details of six different cases of craniotomy to the Congregation and requested it to pass upon them. The six cases* were supposed to include the whole variety of conditions likely to occur in such instances. It took the Holy Office three years to give its answer, which, at last, on August 19, 1889, came in the following

*Stated in full in *Eschbach's Disputationes Phys. Theol., ed. alt. pp.* 464-467.

terms: *In scholis catholicis tuto doceri non posse licitam esse operationem chirurgicam quam Craniotomiam appellant, sicut declaratium fuit 29 Maii,* 1884, *et quamcumque chirurgicam operationem directe occisivam foetus vel matris gestantis.* This disposed finally of craniotomy as also of similar operations that destroy the life of the fetus, such as *Cephalotripsia, Embryotomia, Decollatio, Exenteratio, Embryothlasia,* etc. Although both answers were worded *Tuto doceri non posse,* this expression may not be construed so as to mean that, while its lawfulness cannot be taught, yet in single cases there may be justification. The term, *Tuto doceri non posse,* means in the language of the Congregation that the matter is finally and entirely condemned.* Hence, all theologians of the present time put the ban upon craniotomy. A physician, unless exonerated by *conscientia erronea,* commits, without doubt, a grave sin if he performs craniotomy or a similar operation. But does such a physician fall under the censure reserved to the bishop, if he was aware of the excommunication proclaimed against the *procurantes abortum effectu secuto?* Theologians differ in this matter. Some, as, for instance, Berrardi (*Praxis Confess. IV., n.* 1094), Haine (*Element. Theol. Mor., ed.* 4, *IV., p.* 476), Genicot (*Theol. Mor., ed.* 5, *II.* 608) and others hold that craniotomy and kindred practises, while direct murder of the child, are in reality neither the procuration of premature birth nor abortion. Thus Haine: *neque huc (ad abortum) pertinet craniotomia seu embriotomia: quia differt ab abortu nedum in terminis, ut per se liquet, set etiam re, cum non sit ejecto foetus, sed potius oc occisio foetus, quam consequitur cadaveris ejectio. Aliunde in poenalibus non valet argumentum a pari, nec imo a fortiori.* Nevertheless, the majority of theologians teach that

*Compare the answer of Cardinal Patrizzi in *Eschbach, l. c., p.* 462.

craniotomy, and similar destroying operations, fall under the censure. A physician performing craniotomy kills the child no less than the one who produces abortion. Keeping in mind the aim of the prohibition of abortion: protection of the child life, it must be admitted that the same aim would demand the prohibition of craniotomy. Indeed, the physical action is much the same in both proceedings. Notwithstanding all this we are inclined to take the milder view of Haine, Berrardi and Genicot, for the following reasons: (1) Excommunication is obviously a *poena,* an *odiosum.* Here applies the principle: *In odiosis quod minimum est, tenendum est,* and, *odiosa sunt restringenda.* Whatever does not with absolute certainty fall under the excommunication must be regarded as (ecclesiastically) not liable to the punishment. Strictly speaking, however, the definition of abortion *violenta et culpabilis ejectio foetus immaturi ex utero materno,* does not apply to craniotomy. For, in case of the latter, there is the mature fruit. (2) A rigidly formal interpretation of censures is customary also in the case in other matters. For instance, while the perusal of heretical books falls under the penalty of excommunication, it is the general opinion that this penalty is not incurred by those who make others read such books aloud to them. It cannot be claimed that there is any great distinction between reading such books and listening to some one else reading them. With the same right it might be said that *procuratio abortus* incurs the censure, but not craniotomy. (3) Since the issue of the bull *Apostolicae Sedis* there has been a marked tendency by ecclesiastical legislature to lessen censures and to facilitate absolution. The Code does not settle the question. Many commentators hold that excommunication is not incurred by craniotomy (Cf. Sole, De delictis et poenis, p. 318). On the strength of these three reasons the view of the authors cited above should be

supported. Hence, every confessor may (*de jure communi*) absolve a physician who accuses himself of having performed craniotomy. It is understood, of course, that the physician positively promises to omit such operations in the future. If the physician is still *bona fide* in regard to craniotomy, the confessor should be careful not to disturb this *bona fides*, because by such course there is usually nothing gained, and very likely much lost. In this respect we agree with Noldin, who states (*Sum. Theol. Mor. II., n.* 333, *ed.* 6*a.*), *Cum tamen demonstratio, qua ex principiis naturalibus craniotomia ostenditur illicita, non sit adeo plana atque evidens, facile fieri potest, ut medici bona fide eam exerceant. Ideo caveat confessarius, nisi expresse de hac re interrogetur, ne eorum bonam fidem perturbet.*

DR. PRÜMMER, O.PR.

XXXVIII. CAN A BEQUEST FOR MASSES IN THE TESTAMENT OF A SUICIDE BE EXECUTED?

Sempronius, a man in comfortable circumstances, and regular in the performance of his religious duties, made, while still in the best of health, his will, which contained, amongst other things, the provision that after his death a number of Masses should be said annually in his parish church for the peace of his soul, a considerable sum being set aside for this purpose. After drawing his will, Sempronius lived his usual life for several years in the best of health, when suddenly the community was shocked by the news that Sempronius had committed suicide. The validity of the suicide's will was not disputed in any way, and the heirs sought to execute also the bequest for the foundation of Masses for the departed. The question is asked: Can this legacy for Masses for the repose of the soul of a suicide be accepted and carried out by the Church?

The suicide's pastor, to whom the heirs applied in this matter, was not a little surprised, as may be imagined, at the suggestion, but after some reflection he arrived at the following conclusions: (1) It appeared to him that the bequest of Sempronius should be accepted and the Masses said, because it was the deceased's expressed desire, and, because now unalterable and sacred, ought to be carried out. It seemed to him that ecclesiastical, as well as State, laws were in favor of this view. In a decree of Pope Gregory IX. bishops are enjoined to take particular care that executors of a will proceed in all things according to the intention of the testator,* and to carry out carefully all his directions.

*According to the explanation of Canonists the last will is called *testamentum quia testatio mentis est.*

The decree* orders *cum in omnibus piis voluntatibus sit per episcopos locorum providendum, ut secundum defuncti voluntatem universa procedant, mandamus, quatenus executores testamentorum, hujusmodi, ut bona ipsa fideliter et plenarie in usus praedictos (usus pios) expendant, monitione praevia compellas.*

(2) This view the pastor was inclined to take also for the reason that the validity of the will had been established beyond question. The executors in urging the carrying out the bequest for Masses acted in perfect accord with both ecclesiastical and State law. *Executores ultimae voluntatis,* thus ordains the Pope named,† *post mandatum susceptum per diocesanum episcopum cogi debent, testatoris explere ultimam voluntatem.*

(3) In this opinion the pastor is supported by ecclesiastical decrees according to which even verbal bequests are to be strictly carried out, and which threaten with excommunication those who omit to execute bequests for pious purposes. Gregory IX.‡ ordained *Cognovimus quod moriens uxor . . . nudis verbis scutellam argenteam cuidam monasterio reliquerit. In quibus voluntatem ejus volumus adimpleri,* and the Synod of Mayence§ prescribed *Si haeredes jussa testatoris non adimpleverint, ab episcopo loci illius omnis res, quae eis relicta est, canonice interdicatur, ut vota defuncti adimpleantur.*

(4) The pastor realized that the bequest of Sempronius, in view of his subsequent suicide, was something quite extraordinary, and that the carrying out of the same would in all probability be opposed by considerable difficulties, yet he decided in favor of its

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*Cap. XII. (lib. 3. tit. 26).
†Cap. XIX., l. c.
‡Cap. IV., l. c.
§Cap. VI., l. c.

validity on the principle: *In dubio standum est pro valore actus,* and on the strength of the law which says: *Tenet pro reo, non pro actore sententia nisi in causa favorabili, puta (in) matrimonio libertate, dote seu testamento.*

(5) The pastor, finally, believed to find support of his view in the decree of Alexander III. (*Cap. 26, x lib. 2, tit. 28*), according to which bequests for pious purposes, may be considered as valid, even though their form would not be recognized under civil law, because the strict requirements of the profane law are not considered to govern such bequests. *Mandamus,* states the Pope (*Cfr. Ferraris, l. c., Art. II., cum. 5, et seqq.*), *quatenus aliqua causa talis ad vestrum fuerit examen deducta, eam non secundum leges (sc. civiles), sed secundum decretorum statuta (i. e., leges ecclesiasticas) tractetis tribus aut duobus testibus legitimis requisitis.**

The Rota gave decisions in the same sense under date of March 11, 1689, and of June 23, 1704. Hence some of our best authorities in Canon Law (for instance, Fagnanus, Reiffenstuel, Pirhing, Engel, etc. (*Cfr. Ferraris, l. c., num. 6, et seqq.*) hold that bequests for pious purposes (*ad pias causas*) enjoy special privileges, not merely *pro foro interno,* but also *pro foro externo.*

On the other hand, the pastor was mindful of the manner of Sempronius' death, and he realized that the accepting of this legacy for Masses would cause considerable misgivings in the congregation, and that the people would be scandalized at seeing Masses said for a suicide. For this reason it seemed to him, after all, more probable that Sempronius' legacy for Masses could *not* be accepted. In this predicament he decided to submit the matter for decision to his bishop.

*It is to be mentioned that the matter is judged here from the viewpoint of ecclesiastical legislation.

In order to solve the question properly it must be ascertained (1) whether Sempronius was in sane mind to the end, and, also, whether he desired the Masses said only for himself; (2) whether it was his intention that the Masses be said for himself *and* for his relations.

Ad. I. If this is the case the legacy for Masses cannot be accepted, nor can Masses be said. A decree of Pope Gregory II. (*cap.* 21, *c.* 13, *yu.* 11; *cf. cap.* 13, *l. c.*) expressly state that only for pious Christians, who reconciled with God departed this life in the state of grace, but not for the impious, can prayers be offered after their death.* That Sempronius, who *ex hypothesi* voluntarily took his life, cannot be numbered among the former may be supposed with certainty.

The Pope states: *Sancta sic tenet ecclesia ut quisque pro suis vere Christianis offerat oblationes atque presbyter eorum memoriam faciat; atque quamvis omnes peccatis subjaceamus, congruit, ut sacerdos pro mortuis catholicis memoriam faciat et intercedat; non tamen pro impiis (quamvis Christiani fuerint) tale quid agere licebit.*

If then not even public prayers may be offered for such departed, still less can the holy Sacrifice of the Mass, the supreme prayer, be offered for them. The bequest of Sempronius seems, for this reason, invalid and the Church cannot accept it.

According to the teaching of the Catholic Church, the sacrifice of the Mass can only be offered up for her faithful children and living members, and Sempronius through his own act voluntarily departed from their ranks. *Tantum abest,* thus teaches the Council of Trent,† *ut cruentae oblationi Christi per oblationem incruen-*

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*Hence, the priest pray in the *Memento pro defunctis: Qui nos praecesserunt cum signo fidei et dormiunt in somno pacis.*

†*Trid. sers. 22, cap. 2; cf. sers. 25, decret. de purgatorio.*

tam quovis modo derogetur. Quare non solum pro fidelium vivorum peccatis . . . sed etiam pro defunctis in Christo, nondum plene purgatis, rite juxta apostolorum traditionem offertur.

As it cannot be held of Sempronius that he departed this life in the peace of the Lord, the Church, by accepting bequests for Masses to be said for him, would act contrary to her own teaching which, of course, is not to be thought of.

Moreover, the intercession of the Church would not avail Sempronius. If he culpably put a violent end to his life, he died in grievous sin, and not in the state of grace.* Hence, St. Augustine writes (*Euch. c.* 109, *et* 110; *cf. cap. xxiii, l. c.*): *Sed haec (missae sacrificia eleomosynae) mortuis prosunt (tunc), qui cum viverent, ut haec sibi postea possent prodesse, meruerunt . . . Sacrificia altaris pro non valde malis propitiationes sunt, pro valde malis nulla sunt adjumenta mortuorum.*

The well-known axiom of this Father of the Church, *Quis potest scire* (whether such an unfortunate in the last moments of his life did sincerely repent of his act, and found favor with God), is not to be considered in the application of the law, because decision must be based upon the known premises.

This follows, finally, from the precepts of the Church, by which those who in a sane state take their own lives are to be refused Christian burial. The Roman Ritual (*Rit. rom. de Exequiis*) prescribes: *Negatur ecclesiastica sepultura seipsos occidentibus ob desperationem vel iracundiam, non tamen si ex insania id accidat, nisi ante mortem dederint signa poenitentiae.*

The Congregation of the Holy Office prohibits this even more emphatically in the words (*Die.* 16, *Mai.*, 1866): *Quando certo con-*

*Cf. Eccl. xi, 3; Matt. v, 26.

stat vel de iracundia vel de desperatione, negari debet ecclesiastica sepultura et vitari debent pompae et solemnitates exequiarum. If then such persons are refused Christian burial, it is not possible without contradiction to accept, or say, Masses for them. Otherwise the Church would, on the one hand, censure such a departed by depriving him of Christian burial, while by accepting and executing a bequest of Masses, she would exonerate Sempronius from culpability: he would be considered unworthy of Christian burial: but worthy of the honor, the greatest grace, of having the holy Sacrifice offered for him. On the one hand, the Church would put her ban on the crime of suicide by refusing burial, upon the other, she would, by the execution of such a bequest for Masses, paralyze her ban, and confound the faithful in their religious sentiments and convictions. St. Ambrose (*De Offic., lib. II., c.* 28) says rightly in this respect: *In sepulturis Christianorum requies defunctorum est.*

Ad. II. Did Sempronius intend, however, that the foundation of Masses should be executed not only for him, but at the same time for his departed relatives, the bequest may be carried out in the only manner in which it can be carried out. Since, as shown above, Masses for Sempronius cannot be said, the Masses thus founded would be offered for his departed relatives, and the fruits of the holy Masses, to which, by the wording of the testament, they were entitled, would not be lost to them.

It cannot be objected that such an execution of the bequest would be incomplete, and, therefore, illegal. We have shown that the bequest, in so far as it concerned the testator, cannot be executed. This fact will not invalidate the other lawful stipulations and they must be executed by establishing a foundation of Masses for the departed relatives of the testator, so that their claims, established by Sempronius, will not be frustrated. The testator cannot profit by

his bequest in consequence of his detestable act, yet his departed relatives must not be deprived of the advantage intended for them, and this part of the testament should be fulfilled according to the will of the testator.

Nor can it be objected that with the invalidation of one provision of the testament, the others become *eo ipso* invalid. This would only be the case, if it could be proved that both stipulations of the testament were inseparably connected with one another. It follows that the bequest, in so far as it concerns the departed relatives of Sempronius, can be executed without the least scruple. In regard to this rather delicate question Ferraris teaches (*Anniversarium, num.* 15) that in such a case the will only in as far as it concerns the testator, not, however, in so far as it concerns his departed relatives, is ineffective because the stipulations in the testament regarding the latter have the *same* force as those which refer to the testator. *Si anniversarium,* so writes this author, *ordinatum fuerit a testatore pro sua anima et pro animabus suorum, non cessat testamentum (sc. in casu suicidii voluntarii); quia, licet tale anniversarium non possit consequi effectum in favorem testatoris (suicidae), potest tamen consequi effectum in favorem aliorum (consanguineorum). . . . In hac enim dispositione aeque principaliter veniunt suffragia pro animabus suorum ac pro anima sua.*

Can the executor of the estate claim that the bishop is obliged to accept the bequest for Masses in the intention of Sempronius, and that for this reason it must be executed in accordance with his intention? Not at all. The bishop is strictly bound by the above-quoted Church laws. Furthermore, without his consent, and this is to be remembered in the question before us, no foundation of Masses can be made, as is confirmed by the quoted decisions of the ecclesiastical law (*Cfr. cap.* 3, 6, 17; *lib.* 3, *tit,* 26) and by

general ecclesiastical usage. The decision of the Council of Trent* regarding the execution of pious bequests through the bishop of the diocese, reads: *Episcopi etiam tamquam sedis apostolicae delegati in casibus a jure concessis omnium piarum dispositionum, tam in ultima voluntate, quam inter vivos, sint executores.*

This decree obviously presumes that bequests must be accepted and approved by the bishop, and this again presumes that the bishops have the right to decide whether a legacy for Masses *can* be accepted and executed. For, as Craisson says† very appropriately, *non est verosimile, quod episcopi tam stricte alligarentur sola (ultima) voluntate subditorum a seipsis non approbata.*

So important an institution, for the individual as well as for the Church, as without doubt the foundation of Masses is, requires continual and rigid supervision, as otherwise it may easily be abused, and untoward things may happen. For this reason the authorities teach:‡ *Rectus postulat ordo et regulae canonicae vetant, ne fundationes acceptentur absque praevio assensu episcopi.*

If, therefore, the bishop has the right to accept and sanction foundation of Masses, he has also the right to refuse legacies for Masses, either wholly or—as in our case—in part, inasmuch as he cannot approve of a foundation which would be in contradiction to doctrine and law.§ Otherwise the right of the ecclesiastical superior would depend upon the will of the individual testator, and hence

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**Trid. sess. 22, cap. 8, de ref.*

†*Manuale tot. juris can.*

‡*Praelectiones juris can.*

§It is to be remembered that such bequests often contain strange stipulations. If the foundations thus provided for should be realized, bequests for Masses and wishes of testators must frequently be subjected to thorough revision. Not infrequently such stipulations have to be cancelled altogether, without any objection from the executors of the will.

be illusory—which is against the plain provisions of the law—and the Church would often be brought into contradiction with her canons, as well as with the lawful demands of the faithful.

It must not be overlooked, finally, that a bequest for Mass foundations and its acceptance by the bishop has the character of a contract. To conclude a contract, especially a *contractus onerosus,* the consent of both contracting parties is required.

Contractus—thus the 85 *regula juris—ex conventione* (agreement, consent) *legem accipere dignoscuntur.* Every obligation presupposes the voluntary consent to assume the same. Consequently, it depends upon the consent of the Church, whether she will receive a legacy or not. The Church can manifestly only accept a legacy that is legally and morally acceptable, which can not be claimed for this bequest of a suicide.

This is evident also from the decision of the Council of Trent, according to which the bishops in regard to Mass foundations—if, for instance, their number is too large in a church and the stipend insufficient—may make disposition as they consider right and practical, and under certain conditions they may even reduce such Mass foundations. If they can do this, then *a potiori* they can alter Mass bequests, or refuse them altogether, if they consider their execution impossible or not practicable. Hence, prominent theologians hold that the bishop may issue an individual statute for his diocese and decide the conditions under which a Mass bequest may be accepted and executed (*Praelectiones juris can. l. c., p.* 511).

It is evident that the bequest of Sempronius may be accepted, and the Masses said, if it is proved that he was in unsound mind when he sought death by his own hand. For reasons of prudence a Mass thus founded should either not be published at all from the pulpit, or only after a sufficient lapse of time. The Con-

gregation of the Holy Office gave in regard to the burial of such persons the following decision: *Quando certo constat de insania (suicidae), datur ecclesiastica sepultura cum solemnitatibus exequiarum.* If in such case a solemn funeral is allowed, the essential element being the offering of the holy Sacrifice of the Mass for the departed, it is plain that for such a person also anniversary and other Masses may be accepted and said.

Dr. Anton Brychta.

XXXIX. REPLATING AN INDULGENCED CROSS

A pilgrim to Rome had a small cross blessed by the Holy Father and endowed with the indulgence *toties quoties* for the dying. Upon his return home, he removed from the crucifix the body, had it silver-plated, replaced it and presented it to a friend. Subsequently he inquired of a priest whether the great indulgences were still attached to the cross? What answer should he receive?

The pilgrim should be told that the great indulgences (excepting the case stated below) are surely still attached to the Cross. Two reasons may cause a doubt: (1) because the pilgrim removed the body from the Cross; (2) because he had it silver-plated. Both things may be done without interference with the indulgence. The first did no harm, because in the case of crucifixes the blessing is bestowed upon the image of Christ, so that this, without losing the indulgences, can even be attached to another cross of any material whatsoever (S. C. Ind.; April 11, 1850).

Neither is the silver-plating of any consequence, as is clear from the generally accepted rule about blessed articles. Indulgences cease on account of change of material of the blessed object only in case the change is an essential one (*Beringer, Indulgences, p.* 340, 10*th edition*). An alteration is, in the unanimous opinion of theologians, essential when the added material, in comparison to the material of which the blessed article consisted, is of the same or greater quantity, because in any other case it may truthfully be said that the article consists morally of the same material as before. Without doubt this is so in the case of silver-plating, in which the thin silver coating is generally far less in quantity than the material

of the blessed article, so that the latter, even after the plating, in a moral sense remains the same as in form so in material.

We said *generally:* for if in our case a heavy silver-plating of the crucifix should have brought about that the silver covering exceeded in quantity the material of the image of Christ, or equalled it, then, according to the stated rule, the indulgences are no longer on the Cross.

That, with exception of this case, the blessing and indulgence continue, follows from the rubrics about analogous blessings of churches and articles of divine worship. It is quite certain that a church building does not forfeit its blessing by being white-washed, or even if given a substantial coating, with marble plates, etc.

Formerly some authors argued that a crucifix replated would lose its blessing just as a chalice lost its consecration by renewing the gold plating, as had been ruled by the S. Congregation of Rites, June 14, 1845 and May 9, 1857 (Decreta Authentica, Nos. 2889 and 3042). The Code of Canon Law, however, states explicitly in Canon 1305, sec. 2, that chalice and paten do not lose the consecration neither by the wearing off of the gold plating nor by renewal of the plating.

XL. REGARDING THE CONFESSION OF A PERSON HARD OF HEARING.

With considerable anxiety Father Cajus enters for the first time the confessional. His first penitent is an aged lady, who, amongst other things, accuses herself of not having kept the prescribed fast days. After listening to her Confession, Cajus, as in duty bound, puts some necessary questions, but he receives either a wrong answer or no answer at all. It becomes evident to the young priest that he has before him a person hard of hearing. Father Cajus is perplexed, but after some hesitation, he decides to unconditionally absolve the penitent, who, it appears to him, is well disposed; furthermore, he imposes a very trifling penance, because he cannot speak to the penitent without being heard and understood by others. The question is, Did Cajus act rightly or not?

Cajus acted quite correctly, as he only became aware of the penitent's deafness after the confession of sins, and for this reason was unable to take his penitent to another place, or bid her to return at a later hour, without causing others to suspect a grievous matter about which they would think the confessor wanted to inquire more thoroughly. For this reason also Cajus very properly imposed merely a small penance. The justification of this procedure is found in the solicitous concern not to violate the seal of Confession. The material completeness of the Confession must here give way to the regard for the seal of Confession. Formal completeness of the Confession suffices here because material completeness is morally impossible.

The confessor would have been obliged to proceed differently

had he noticed the defect before her confession of sins, or had he known from experience that he had before him a deaf person. In such a case he would either appoint another time for her to come to Confession, or seek an appropriate place, where he could ask the necessary questions, unless, indeed, in the case of females, prudence and regard for good repute made it advisable to be satisfied even in this case with the formal completeness of the confession of sins (*Cf. S. Alphonsus, Praxis Confessarii,* 104; *Lehmkuhl, Theologia Moralis, edit. VI., tom.* 2, 328).

Dr. John Döller.

XLI. NECESSITY OF CONTRITION IN THE SACRAMENT OF PENANCE

Titus makes his Confession to the priest Sempronius, and concludes with the words: I should also mention that in the last Confession, on account of a hurried preparation, I quite forgot to awaken contrition, I consoled myself, however, with the assurance a former confessor gave me in a similar case, when he said that I need not mind the omission, because the fact that I go to Confession proves contrition. I shall make it a strict rule hereafter, nevertheless, to make after every Confession an act of contrition in advance for the next Confession, so that this matter will be attended to without fail. What will Father Sempronius say to this?

Answer.—The present case proposes three questions: (1) Is it true that people go to Confession only because they feel contrition for their sins? (2) Is contrition absolutely necessary for the forgiveness of sins? (3) Does an act of contrition, awakened immediately after a Confession in advance for the next Confession suffice in every case for the validity of the Sacrament? To the first question we must answer no, as reason and experience dictate. It is to be supposed that, like every other sacred matter, and like every Sacrament, so the Sacrament of Penance is misused by many. This misuse may consist in a culpable lack of the most essential requisite for the Sacrament on part of the receiver, the lack, namely, of a real, supernatural, all surpassing contrition, embracing all sins. Experience confirms this fact only too often. Many go to Confession solely because their usual time has arrived and not on account of a consciousness of sinfulness, not because they feel the need of conciliа-

tion with an offended God; they give no thought to that. Many again take as little trouble as possible about Confession, they confess such of their sins as they happen to think of in a hasty preparation, recite superficially the customary formula of contrition, without reflection. Some persons go to Confession in a mood of dejectedness caused by purely worldly reasons. There are others again who go for various reasons, among which the love of God, or contrition, has no place.

The second question whether contrition is absolutely requisite for the forgiveness of sins must be affirmed unconditionally. Leaving out of consideration the theological controversy whether God in His infinite freedom *de potentia absoluta* is able to remit to man a grievous sin without contrition, it is certain that He cannot do this *de potentia ordinata; i. e.,* according to the order of the salvation as instituted by Him. Thus the *Trident. sess.* 14, *cap.* 4, teaches that sin never can, and never will, be remitted without contrition. For this would be in opposition to all that which God has vouchsafed to reveal to us, about His infinite perfections and attributes, it would be in opposition, also, to the natural sense of justice, if the one who had committed a crime against a mighty ruler would be tolerated to appear before the offended and say: "Forgive me, O King, for my offense, but upon the first opportunity I will commit it again," and would obtain forgiveness. For this reason, and because the *Trident, sess.* 14, *cap.* 3, teaches that contrition is not only an absolutely necessary disposition for forgiveness of sins, but also the most important part of the matter of the Sacrament of Penance, this matter must be present at every reception. It must be supplied in the form of an interior act, with or without outward expression. That by an interior act there is meant no special formula is evident; there must be, however, present in

the person's disposition in some way a spiritual activity, a thought, however brief, that effectively and essentially contains the hatred of sin and the return to the love of God. Since the Tridentine enumerates, as matter of this Sacrament, the three acts of the penitent: contrition, confession and satisfaction, it is plain that contrition, like confession and satisfaction, must consist in some way or other of a positive act; and the more formal, lasting and profound it is, the better.

The answer to the third question depends upon the fact whether the penitent's act of contrition must have relation to the Sacrament of Penance or not; and of what kind this relation must be. The far greater number of theologians demand this relation, so that contrition, actually awakened, but without all relation to the subsequent Confession, puts the validity of the absolution in doubt. This is evident from what has been said. For if, according to the Tridentine, the three acts of the penitent form the matter of the Sacrament of Penance, they must manifestly be supplied *actus humani; i. e.,* with intention and consequently with reference to the Sacrament. Concerning the act of contrition it is not necessary that the intention, or resolve, to confess should precede it; but some relation to the Confession it must, nevertheless, possess. According to Lehmkuhl (*Theol. mor., ed. V., II., n.* 280) this relation is supplied if (1) in the tribunal of penance a person, after accusation, awakens the act of contrition, or is led to do so by the confessor. The former is not to be advised, because it may happen that absolution by the confessor is given before real contrition has penetrated the heart; (2) if a person with intention to confess examines his conscience and thereupon, in all earnestness, awakens the act of contrition as preparatory to his entering the Confessional. This manifestly is the best manner to go to Confession; (3) if a person,

through some cause, is moved to contrition and to the resolution to confess, even though the actual Confession be made only the next, or the second following day; if only, in the latter case, the act of contrition *virtualiter, i. e.,* by greater endeavor to avoid sin, or by oft-repeated prayer, continues. Should, however, in the meantime another grievous sin be committed, then the relation ceases, a new act of contrition must be awakened, over former sins as well as over the last one.

MARIA DA KUNDL, O.F.M.

XLII. SUPERSTITIOUS FAITH IN PRAYERS

Melania asks her confessor Claudius whether she is allowed to practice a treatment of which she has often made use before. If someone has received an injury causing the flow of blood, and she be present or called, Melania confidently says over the wound the words: "Blood, cease to flow, through the Sacred Blood and in the name of Jesus," then making the sign of the Cross over the wound, and she claims that as result the blood ceases flowing at once. Father Claudius answered: If nothing else takes place, you may continue doing this. Did Father Claudius give the correct answer?

This is a case of the *vana observantia,* especially of the question, whether prayers and invocations to cure illness are to be considered superstitious. According to the theologians (*S. Alph. Th. M.* 1, 4, *n.* 20, 21; *Müller, Th. M.* 1, *II.,* §71, 5; *Lehmkuhl Th. M. I.,* 357) there is to be distinguished: (1) If such prayers contain anything untrue, useless, undignified, ridiculous, even if in other parts true and proper, then such prayers are prohibited.

(2) If the prayers or exorcisms are of themselves good and correct, their use is allowed, if there is not demanded of them infallible efficacy (*ensalmus invocativus*).

(3) If there is ascribed to them, especially if performed in a certain number of repetitions or in a certain manner, an infallible efficacy, they are unlawful (*ensalmus constitutivus*). Under this head belongs the insistence upon a certain formula which is supposed to contain the power; for, though God grants to many the faculty of healing, this is a personal grace and not restricted to certain words or signs. *S. Alph. l. c. n.* 19: *Arcendum esse* . . .

qui certis verbis utitur, quibus credit in esse virtutem, cum gratia conferatur personae, non autem verbis et signis. Laymann, l. 4, h. 10, c. 4, n. 4: Licet Deus quibusdam conferat gratiam sanitatum, tamen ita confert, ut sit gratia personalis, et non infallibiliter annexa certae rei aut actioni, quam quivis hominum adhibere et effectum miraculorum praestare possit.

This is the case also if there are expected special, supernatural effects infallibly from certain prayers, or pious exercises, unless there is, as in the case of the Sacraments, divine institution. We may not even infallibly expect of sacramentals an effect in a certain direction, although the prayer of the Church is infallibly heard.

(4) If in doubt whether, in the use of certain forms or prayers, superstition is involved, they may be employed with the explicit intention that the expected effect is not desired of them if superstition is involved. St. Alphonsus advises that in the instance of uneducated people who, in good faith and devotion, observe some usages not recognized by the Church, they may sometimes be let undisturbed, because it is hard to wean them from things that have come down to them from fathers and forefathers. In general, the priest should proceed against superstitious practises while with determination yet with great caution, in particular should he endeavor to accustom the faithful to a proper and correct use of sacramentals.

Applying these principles to our case we say: of itself this prayer is correct, it contains nothing wrong, and if said with proper confidence in God, it is lawful. If, however, an effect is infallibly expected, or expected from this particular formula, so that a deviation is thought to put the effect in question, then the practice may be regarded as superstitious. This points out the condition under which this person may be allowed to continue her practice. First

of all, the worthiness of this person comes into consideration, for if God may grant the *charisma* even to sinners, this is the exception and not the rule. The person is then to be asked whether she ascribes the effect to this particular formula, and infallibly, and is to be instructed on this point. There is no objection against using always the same form of prayer, but she must not expect efficacy from this formula as such: still less may she expect infallibly such efficacy without special revelation. If there is no reason for apprehension in these matters she may continue her practise.

Dr. Goepfert.

XLIII. IS THE INVOCATION OF THE HOLY NAME INDISPENSABLY REQUIRED FOR GAINING THE INDULGENCE FOR THE DYING?

In a dejected mood the priest Caius comes to a confrater and relates that he has just been made aware that the invocation of the holy Name of Jesus on part of the patient is a *conditio sine qua non* for granting the indulgence for the dying: he has heretofore neglected to make the sick aware of this, and he asks if at least those persons may have gained the indulgence who, though not *ad hoc,* but by chance, for instance, in saying the Hail Mary, had pronounced the name of Jesus. What answer is to be given?

We have to consider here three points: (1) Whether the invocation of the name of Jesus is an indispensable condition for gaining this indulgence. (2) Whether it is sufficient if the patient, not specially to gain the indulgence, yet otherwise, pronounces the name of Jesus? And (3) if even such casual invocation has not taken place, is all hope excluded that the sick person may have gained the indulgence?

(1) As is well known the granting of the indulgence for the dying, the *benedictio apostolica in articulo mortis,* is based upon the Bull *Pia Mater* of Benedict XIV., issued in the year 1747. With truly motherly love the Church wishes to come to the assistance of her dying children. The *benedictio* may be administered to all the seriously sick, but the indulgence is only gained in *vero mortis articulo,* at the moment of death itself. Surely every priest

regards it as his sacred duty, in accordance with the intention of the Church, to apply this indulgence to the dying, and to take care that all conditions are fulfilled, so that there may not happen what the pious and learned Martinus Aspilcueta states in the words *Saepe contingit, ut quis confiteatur et moriatur plenus Bullis et vacuus indulgentiis.* The conditions for gaining this indulgence for the dying are the following: (1) The intention (habitual at least) of gaining the indulgence. (2) Confession and Communion, where possible. (3) The state of grace, if not at the moment when the *benedicto* is given, yet at the moment of death: for just at that moment the indulgence is gained. Hence, the Ritual says: *Si confessionem non petat, excitet illum ad eliciendum actum contritionis.* (4) Acts of contrition and charity, and, particularly, the willing acceptance of death from the hand of God. Upon this condition Benedict XIV. lays most particular stress and in the bull *Pia Mater* there is specially provided: *ut omni ratione studeant (sacerdotes) moribundos fideles excitare ad novos de admissis peccatis doloris actus eliciendos concipiendosque ferventissime in Deum caritatis affectus praesertim vero ad ipsam mortem aequo ac libenti animo de manu Dei suscipiendam. Hoc enim praecipue opus in huiusmodi articulo constitutis imponimus et iniungimus, quo se ad plenariae indulgentiae fructum consequendum praeparent atque disponant.* The priest must draw the attention of the dying to this condition, and it is best done in Confession, or when otherwise alone with the patient. (5) The priest must strictly adhere to the *formula a Benedicto XIV. praescripta,* as found in the Ritual. Is there not time enough for the priest to say the whole formula, he may make use of the abbreviated formula extracted from Benedict's formula and worded: *Indulgentiam plenariam et remissionem omnium peccatorum tibi concedo. In nomine Patris et Filli et Spiritus sancti.* Amen.

This brief formula, although not found in the *Rituale Rom.*, is, nevertheless, approved by Rome, and is contained in the appendix of breviaries approved by Rome. Finally (6), the invocation of the holy Name of Jesus. This last condition we will examine here more closely.

It would appear at first sight that the invocation of the holy name is not required as *conditio sine qua non,* because this condition is mentioned neither by the bull *Pia Mater* nor in the rubrics of the *Rituale Rom.* However, this condition is mentioned in the rescripts to individual bishops, through which the faculty is given them to grant this indulgence, and to subdelegate for it. Decisive is the answer of the Congregation of Indulgences of September 20, 1775, to the question: *Invocatio saltem mentalis, de qua fit mentio in Brevibus ad Episcopos de hac benedictione missis, praescribiturne, quamdiu aegrotus suae mentis est compos, ut conditio sine qua non, ad indulgentiam vi istius benedictionis lucrandam?* The answer given was: *Affirmative.* This answer received in recent times a positive confirmation, even *in sensu extensivo.* The Archbishop of Dublin submitted to the Holy See the question as to whether the invocation of the holy name of Jesus was required also in missionary territories. For such districts permission to grant this indulgence is not given in briefs, in which the invocation of the holy name of Jesus is prescribed, but by reason of a constitution of Clement XIV., in which the invocation of the holy Name is not mentioned. Moreover, this constitution was issued three years before the decision of the Congregation of Indulgences of September 20, 1775. *Requirituine,* the archbishop asked, *tanquam conditio sine qua non ad lucrandam praedictam indulgentiam, ut aegrotus in locis missionum constitutus, quamdiu suae mentis est compos, invocet Nomen Jesu, ore, si potuerit, sin minus, corde?* The answer

the Congregation of Indulgences of September 22, 1892, was: *Affirmative: i. e., invocatio, saltem mentalis, Ssi nominis Jesu est conditio sine qua non pro universis Christifidelibus, qui in mortis articulo constituti, plenarium indulgentiam assequi volunt huius benedictionis, iuxta id quod decrevit haec S. Congregatio in una Vindana sub die* 20 Sept. 1775.

It is evident from this decision of the Congregation that, for the gaining of the indulgences, it is absolutely necessary for the patient, provided he be conscious, to invoke the name of Jesus, with the lips if possible, otherwise in spirit.

(2) The second point is whether the patient must expressly and *ad hoc,* that is, with the intention of gaining the indulgence, invoke the holy Name, or whether it suffices if the patient pronounce the name of Jesus casually, for instance, in saying the Hail Mary, or in some ejaculatory prayer. We reply that, for gaining the indulgence, it suffices if the patient pronounces the name of Jesus in any manner, and has, at least in general, the intention of gaining the indulgence, even though he does not know that the invocation of the holy Name is a condition. We must conclude this from an analogous case. According to the general teaching of theologians an indulgence is gained by performing the prescribed act, if one has in general the intention of gaining all possible indulgences, though one may not know that an indulgence is joined to this particular act. What is to be said, we might further ask, if the patient pronounces the name of Jesus only in a prayer which he is obliged to say, for instance, a prayer imposed as a penance? The Code of Canon Law, in Canon 932 states that, as a rule, prayers which one is obliged to say by law or precept do not suffice for the gaining of indulgences. An exception is made in favor of prayers or other good works imposed for penance in confession.

It is required that the patient must, if possible, pronounce the name of Jesus with the lips. Is it necessary that others, the priest, for instance, should hear it? We reply: this is not necessary. This is a matter analogous to the prescribed recitation of the Breviary. The Breviary is *oratio verbalis,* a verbal prayer. It suffices if the words are formed with the articulating organs, it is not necessary to say them so that others hear them; indeed, the priest need not even hear them himself. If the pronouncation or forming of the word Jesus is no longer possible, it suffices for the patient to do it in the spirit *ut invocet nomen Jesu saltem corde.*

When must this invocation of the holy Name take place? Must it be done when the *benedictio apostolica* is given, or is it sufficient if the patient fulfils this condition later, directly before death for instance? We reply, the latter suffices. We conclude this from analogous cases. If, for instance, some one received the *benedictio apostolica* in the state of grievous sin, but later attains the state of grace, the *benedictio apostolica* could not be repeated. Once the *benedictio* has been given to the patient, he gains the indulgence, even if he only fulfils the conditions in the moment of death; *i. e.,* if he enters the state of grace at the moment of death. As with the state of grace, so with the other conditions, it suffices if they are complied with *in articulo mortis,* for at that very moment the indulgence is gained. Therefore, it is sufficient if the invocation of the holy Name of Jesus, if not at the moment of receiving the *benedictio* from the priest, takes place later on, even at the moment of death.

(3) Let us now pass to the third question. If the patient does not at all invoke the name of Jesus, is there no hope that he may yet have gained the indulgence?

In general, an indulgence cannot be gained when an essential condition is not fulfilled, this applies even if this happens as a con-

sequence of inability or ignorance. "If anyone," the Raccolta says, "omits the work prescribed altogether, or a considerable part of it, either from ignorance or neglect, or even from inability, he will not gain the indulgence."

As regards the indulgence for the dying, it should be observed that the Church herself dispenses in the case of the patient's inability from the condition of the *Invocatio nominis Jesu;* for, according to the Ritual, the *benedictio apostolica* may, and should, be given, even to persons deprived of their senses, whether unconscious or insane. In case of the unconscious sick the invocation is entirely dispensed with; it is required only of sick who are conscious, and these latter, if possible, must pronounce the holy name of Jesus, or at least invoke it mentally. The condition is such an easy one that with the conscious sick there can be no inability: the question is: What will be the consequence if, on account of ignorance, this condition were not complied with? We reply: Ignorance would be no excuse of itself; for the *invocatio* is *conditio sine qua non.* If, therefore, a conscious patient neither invokes the holy Name with the lips, or, this being impossible, in spirit, he will not gain the indulgence. Yet it is to be observed how unlikely this would be in the case of an otherwise well-disposed Catholic, and for this reason our Father Caius probably need not worry with regard to the patients whom he failed to remind of this invocation.

While discussing details we may cite a few other cases: A sick man while receiving the *benedictio apostolica* omitted to pronounce the name of Jesus with the lips, although quite able to do so. Later, though retaining consciousness, he grows so weak that he can no longer pronounce the holy Name with the lips; he, however, invokes it in spirit. Does he gain the indulgence? We answer, Yes. For he in fact fulfils all conditions immediately before death. Our

answer would be the same even if he, while capable, intentionally and in malice omitted to pronounce the holy Name with the lips; but later on, seized by remorse, and no longer able to invoke the holy Name with his lips, does so in spirit, for he, too, has fulfilled the conditions.

A man, to his last conscious and capable of pronouncing the holy Name with his lips, invokes it only in spirit. Does he gain the indulgence? We think we have to answer: No, at least it seems very doubtful. For even if the answers of the Congregation of Indulgences of the years 1775 and 1892 only say that the *Invocatio saltem mentalis Ssi nominis* is *conditio sine qua non*, yet they provide: *invocatio de qua fit mentio in Brevibus ad Episcopus datis.* I have been unable to inspect such a brief, but I think I may conclude from the words of P. Schneider (*Indulgences* 8, *p.* 679), and also from the inquiry of the Archbishop of Dublin that these briefs probably read: *ut aegrotus, quamdiu suae mentis est compos, invocet Nomen Jesu ore si potuerit, sin minus, corde.*

Therefore, the words *Invocatio saltem mentalis de qua,* etc., of the decision of the Congregation, must be taken in this sense. In our case, however, the man could have pronounced the holy Name with his lips, but did not do so, *ergo.*

One more case. The patient at the time when the *benedictio* is given him, omits to pronounce the name of Jesus; later he becomes unconscious and dies. Did he gain the indulgence? If he culpably neglected the *invocatio,* because he did not care for the indulgence, then he has not gained it, there was lacking the *intentio lucrandi indulgentiam.* If, however, the invocation was omitted without fault (from ignorance), and the patient had the good will to gain the indulgence, then the matter is doubtful. From the decision of the Congregation of Indulgences a negative answer seems

to be in order. But cannot this case be considered analogous to the case of an unconscious person receiving the *benedictio? In articulo mortis* both are in the same condition, both have the habitual intention, over both the *benedictio* is pronounced, and while the one was at that time not yet unconscious, now, at the moment of death, he is in the same condition as the other. I would not exclude all possibility of his gaining the indulgence. But would this opinion not make the decision of the Congregation illusory? Not entirely, it would apply if the patient had not lost consciousness, and yet he neither pronounced the holy Name with his lips, nor in spirit, although he could have done so.

The priest—let us emphasize this in conclusion—should never neglect to draw the patient's attention particularly to the two conditions, or ready acceptance of death from the hand of God, and of pronouncing the holy name of Jesus. It will be best to do this when hearing the Confession. Both conditions may be included in a short ejaculatory prayer which the patient should be asked to repeat, for example, "O God, I humbly accept thy holy will. Jesus, my Lord and Saviour, have mercy on me."

IG. RIEDER.

XLIV. MISUSE OF GENERAL CONFESSION BY PENITENTS OF THE FEMALE SEX

No doubt General Confession is in many cases necessary. This necessity will occur in the case of women more frequently than of men, because invalid Confessions, for lack of contrition or of sincerity, are more frequently made by the former than by the latter. When, therefore, there is need of a General Confession in the case of a female, the confessor is, of course, obliged to hear the same. But great precaution is required in this matter, as it not infrequently happens that females misuse General Confession and are prompted by discreditable motives. Such motives are, for instance: 1. Curiosity regarding the ways of a new confessor; 2. Infatuation, which causes the penitent to seek opportunity for long conversations with the confessor; 3. Jealousy, the person endeavoring to stay longer in the confessional than other penitents of her sex; 4. Now and then malicious intention, either of confusing young and inexperienced confessors, or even to lead them into temptation, by inventing sins *contra sextum,* etc. Hence young priests in particular should be cautious in such cases and seek in a prudent way to ascertain of what mind the penitent is, and by what motives she feels induced to make a General Confession.

For it is not merely a waste of time to hear a General Confession made only for purpose of conversation. For that reason it is well not to lose sight of the *Ducite Caute.*

Dr. Joseph Niglutsch.

XLV. THE BURIAL OF SUICIDES

Since cases involving the question of burying suicides are not infrequent, it will be well to give a brief statement of the principles which must govern the priest's procedure under such circumstances.

Christian burial, which includes the obsequies prescribed by the Church, and depositing the corpse in consegrated ground, the cemetery, constitutes a distinction in the view of the Church not only, but also of the faithful, and it can only be accorded to those who, during life and at their death, showed themselves to be true members of the Church, and therefore worthy of this distinction. This manifestly is not true of those who, of sound mind and therefore with premeditation and intention, make away with themselves, and thus not only cause sorrow to the Church, but give great scandal to the faithful. By his crime the suicide forfeits the distinction of Christian burial and it would be unjust, and would provike scandal, if he, in regard to Christian burial, were given equality with those members of the Church who depart this life in the faith and reconciled to God.

Christian burial is a privilege of the faithful also by reason of their communion with the Church, which, according to her teaching, is not terminated by death, but continues after the same. The true Catholic is in his last hour at one with the Church; he receives from her hand the last fortifying, the last consolation upon the final, decisive road. It is therefore a natural and logical consequence that those who have shown themselves unworthy of this ecclesiastical communion, be it during life by a conduct that incurs censure (and which, through the fault of the deceased, has not been removed), or

be it in death, by commission of a grievous crime which the Church punishes with deprivation of Christian burial, have lost the right to such burial. Suicide is such a crime which the Church punishes with the refusal of Christian burial, in order to indicate that those who commit it cannot continue in her communion, and, also, to inspire her children with a great horror of this crime.

The Roman ritual contains the following clear and distinct directions: *Ignorare non debet parochus, qui ad ecclesiastica sepultura ipso jure sint excludendi, ne quemquam ad illam contra sacrorum canonum decreta unquam admittat. Negatur igitur eccleciastica sepultura . . . seipsos occidentibus ob desperationem vel iracundiam, non tamen, si ex insania id accidat, nisi (tales suicidae) ante mortem dederint signa poenitentia.*

Manifestly there is here made distinction in regard to the unfortunates who commit suicide. There are those who, in the state of insanity, of hypochondria, or of melancholy, therefore while of unsound mind, take their lives; to such unfortunates Christian burial cannot be denied, because their act was neither premeditated nor undertaken in full possession of reason, and therefore not culpable; indeed, according to the decision of the Congregation of the Holy Office (ddto. May 16, 1866), they may even be buried with solemn ceremonies.

To the other class belong those who commit suicide with design and premeditation, in a conscious and sane state of mind, in culpable despair or anger. If it is certain that the deed was done in soundness of mind, and with the full use of reason, with full knowledge and intention, then Christian burial, as any other ecclesiastical function, even the ordinary blessing of the corpse, must be denied. In this case Christian burial would manifestly be a violation of the law; it would be a weakening of Church discipline and of the re-

ligious sentiment of the faithful, who would be scandalized by such burial, as experience has shown. Nevertheless the Church, ever solicitous for the salvation of her members, uses even in regard to these iniquitous unfortunates, utmost indulgence and consideration. If such persons do not die in the commission of the deed, and if before dying they give signs of repentance, if they ask for the priest, or, perhaps, even receive the Sacraments, then the Church does not refuse them Christian burial. (*Rit Rom. l. c.*)

When, on the contrary, it remains doubtful, after careful inquiry into the matter, whether the deed occurred with full consciousness and in sane mind, then the suicide's irresponsibility is presumed, because it is not supposed that anyone in sound mind and unimpaired use of reason would commit so grievous and unnatural a crime as premeditated suicide, and deal with his greatest earthly good, his life, so malevolently. In such a case the deceased may be allowed Christian burial, according to the principle: *Odiosa sunt restringenda,* omitting, however, solemnity and display.

If for some reasons it appears doubtful whether a suicide should be refused or allowed Christian burial, the case with detailed information should be laid before the ordinary, and his decision observed.

The principles here briefly set forth governing the burial of suicides are specifically contained in the quoted decision of the Congregation of the Holy Office, of which we will insert here, on account of their great practical significance the chief points: "*Moneantur Parochi, ut in singulis casibus, quoad fieri potest, recurrant ad Ordinarium. Regula est, non licere dare ecclesiasticam sepulturam seipsos occidentibus ob desperationem vel iracundiam (non tamen si ex insania id accidit), nisi ante mortem dederint signa poenitentiae. Praeterea.*

1. *quando certo constat vel de iracundia vel de desperatione, negari debet ecclesiastica sepultura et vitari debent pompae et solemnitates exequiarum;*

2. *quando autem certo constat de insania, detur ecclesiastica sepultura cum solemnitatibus exequiarum;*

3. *Quado tamen dubium superest, utrum mortem quis sibi dederit ob desperationem vel ob insaniam, dari potest ecclesiastica sepultura, vitatis tamen pompis et solemnitatibus exequiarum.*

If these principles about the burying of suicides are rigidly observed and explained to the faithful on suitable opportunities, mistakes in the pastoral practise will not be easily made, and criticism and unpleasantness will be avoided.

Dr. Anton Brychta.

XLVI. IMPOSITION IN THE CONFESSIONAL

In a place where there is a great gathering of disreputable persons, there appeared one day a suspicious-looking individual in the confessional. Among other things he confessed that about a year ago he had been working in a certain convent, and had there taken part in the theft of a chalice, representing in value several hundred dollars. The chalice had then been pawned for twenty-five dollars. Within three days the pawn-ticket would expire, and unless the loan is repaid by that time the sacred vessel would be abandoned to its uncertain fate. The man states that his accomplices refuse to redeem the chalice, but that he, driven by remorse of conscience, has with great effort saved all but ten dollars towards the sum. He asked the confessor to lend him this sum, which he would surely repay to the last penny, so that he may redeem the chalice and restore it to the owner.

As there were many waiting, and inquiry into this matter would probably take up much time, the penitent was told that such an important matter could not be properly discussed in the confessional, and he was directed to come the following day to the priest's study, where the matter might be talked over. Absolution was, of course, not given. The following day this man reappeared, not at the rectory, however, but again in the confessional, thus increasing the priest's suspicions. The latter became even somewhat exasperated and told this supposed swindler just what he thought of him in no uncertain terms. The would-be penitent then became abusive and left confessional and church abruptly and, of course, without absolution.

Father A, the priest in the case, related the facts to his confrater

C., and asked his opinion as to whether he acted correctly. Father C. agreed that the man was probably a swindler. But as there was always a possibility that the matter might really be as stated, he thought that Father A. should have given the matter a more thorough investigation. In the confessional where the welfare of a soul is at stake, Father C. pointed out, it is necessary to proceed with greater caution and foresight than perhaps at the door of the rectory. It is certain that the circumstances justified the suspicion that the man was a clever swindler. Had he been what he claimed to be, if he had taken to heart his sacrilegious deed and by deprivation had striven to make good the wrong done, he would not have dreaded that walk to the rectory, unpleasant though it might have been. He feared, probably, that there he would be unmasked and handed over to the police. However, these are only probabilities. Your procedure, said Father C., would be justified only by absolute certainty, which might have been secured in two ways. You might have either directed him to bring the pawn-ticket, or else offered to go with him to the pawnbroker, with the promise that if the matter was found to be as stated, you would give the money. Then, if the man was a swindler, he would not have waited for further developments and would have vanished at short notice. That Father C.'s advice was to the point was confirmed the very next day. He was in the confessional when a seemingly very contrite man came and confessed this very case. When the man had finished Father C. made him his proposition. It happened as foretold—the penitent left confessional and church quite hurriedly and has not shown up since. Father C. was able to assure Father A. that he need have no scruples. The facts in the case may be of value to others exposed to such imposition.

Dr. W. A. Engelhardt.

XLVII. ADMINISTERING THE LAST SACRAMENTS TO THE FEEBLE-MINDED

In the parish of N. one Remigius, an aged man, lies at the point of death. He has been a hopeless imbecile since his twentieth year, in consequence of a fall from a tree. One of the two priests stationed in this parish remarks: "To such persons in their last moments Extreme Unction is given, but nothing more." But the other does not share this view, and administers to this sick man conditional absolution, also Viaticum and Extreme Unction.

Question: Which of these two priests is right?

If we examine the view of the latter, we shall at the same time arrive at a correct opinion of the other priest's reasoning. We ask: I. Can and may this Remigius be absolved?

We preface our answer by stating a general rule, according to Lehmkuhl: *Quando enim certum est, aliquid essentiale deesse, absolutionem dare non licet, si quidem prorsus vane et proin sacrilege daretur: quando vero aliquo modo, licet tenuiter probabile est,* adesse omnia essentialia, absolutio dari non solum potest, sed debet. Quod intellige tamen ita, ut existere possint casus, in quibus dari possit absolutio, non autem sub peccato dari debeat, quando nimirum plerique theologi negant, absolutionem dari licere, aliquibus tantum docentibus, eam posse dari.* P. II. n. 510. From this general rule there follows for our case:

1. Has Remigius been a total imbecile since infancy, not having

**Marc. Inst. Mor. n.* 1855 (3) remarks, supported by the teaching of St. Alphonsus: "*In casu extremae necessitatis, in Sacramentorum administratione licet uti probabilitate tenui et parum fundata.*"

had a single lucid moment, then under no circumstances could he nor might he be absolved, *proper defectum materiae Sacramenti, tum remotae* (*i. e. peccatorum*), *tum proximae* (*actuum poenitentis*).

2. If, on the contrary, Remigius is only partly imbecile, if there be even only slight reason to suppose that he at the present time has lucid moments and, even though unnoticed, manifests the desire to confess, then, after proper effort to dispose him if necessary, at least conditional absolution must be given him in danger of death.

3. If it is morally certain that the sick man, a total imbecile for years, has no lucid moments even now, no more than ever before during his affliction, absolution cannot be given him even in danger of death, not even conditionally, because in the case of a person who for so many years has been incapable of any intelligent act, it is impossible to presume the *actus poenitentis* (contrition, confession and satisfaction) or in case of necessity, at least perceptible expression of the inward disposition, which, according to the doctrine of the Council of Trent (*sess.* 14. *cap.* 3), and according to the *Rituale Rom.*, constitutes the proximate matter (*materia proxima*) of the Sacrament of Penance, and as such belongs to the essence of the Sacrament, also because such a person can have no actual or virtual intention of receiving the Sacrament, such as is necessary, according to the universal teaching of theologians, for the validity of the Sacrament of Penance. (*St. Alph. Theolog. mor.* 1, *VI. n.* 82.)

4. As opposed to these reasons, the following rule of theologians seems to supply that probability which is necessary in order to make possible the absolution of Remigius, conditionally, upon his death-bed, in the state just described of many years of total loss of reason. This rule states: *Absolvendi sint omnes moribundi sensibus destituti, qui ante sensuum privationem expresse confessionis desiderium ostenderunt, e. g. jubendo advocari sacerdotem. Ratio est, quia confessio*

in casu satis sensibiliter innotescit confessario per testimonium alterius et est veluti confessio per interpretem. Constat ex Rit. Rom. de Sacr. Poenit. Comp. P. Marc: Inst. moral. n. 1855.

If we consider this rule in the light of the various explanations by authorities, we see that they in principle permit even the absolute granting of absolution (*sine conditione: si capax es*), even though some, for greater security, advise conditional absolution. (*S. Alph. Theol. Moral.* 1. *VI. n.* 481: *Utrum vero,* etc.), and that they allow unconditional absolution even if the patient not merely has exteriorly lost use of his senses, but also the interior use of reason. Lehmkuhl states: *Hinc patet, si moribundus per testes ostendit desiderium confitendi, et interim loquelam usumque rationis amisit, de danda absolutione non esse dubitandum, imo de adjicienda conditione: si capax es—non esse negotium faciendum. P. II. n.* 510 (2).

Furthermore, the authorities make no mention here of a requirement that between such personal expression of contrition of the penitent, and the absolution of the priest, at most only a period of an hour may elapse between Confession and Absolution, as under other circumstances (*comp. S. Alph. Theol. Mor.* 1. *VI. n.* 9). The completion of the act of confession therefore must here be furnished in the deposition by witnesses, made in the presence of the priest, hence a longer or lesser interval of time between the penitent's manifestation of contrition and the absolution of the priest does not come into consideration at all. It follows: The proximate matter (*materia proxima*) of the Sacrament is, in a confession through witnesses, found in former acts of the penitent, noticed by witnesses, which are now from their disposition accepted by the priest *judicialiter et sacramentaliter,* and which by means of this testimony and the sacramental verdict of the priest still continue to exist as *materia,* and which with the now supplied form of absolution join in constituting

the Sacrament. In regard to the intention Lehmkuhl writes: P. II. n. 49: *Pro poenitentia requiritur virtualis intentio, si actus poenitentis respicis; habitualis sufficit, si respicis solam absolutionem accipiendam.*

In such confession through witnesses the proceedings are similar to those in a confession through an interpreter (*Confessio per interpretem*).

5. As regards the testimony and witnesses in favor of Remigius, we can at least say for him that which Pope Benedict XIV. in such a case values so highly, namely: *Si jam receptum et ratum est, ut qui nullum poenitentiae signum coram Sacerdote exhibeat, absolutione donetur, quotics adstantes Sacerdoti testificantur, eundem confessionem postulasse; eo fortius absolvi poterit, vel potius debebit is, cui licet nemo testimonium reddat, tot tamen testes sunt de ejus proposito, recipiendi Sacramenta in supremo vitae discrimine, quot sunt actus christianarum virtutum, quot confessiones sacramentales, et communiones, quot demum religionis pietatisque opera, quibus in universo suae vitae cursu manifestum probitatis specimen praebuit* (*De Syn. dioec.* 1. *VII. cap. XV. n. X*).

Lehmkuhl adds to this: *Neque talis desiderii aliqualis manifestatio deest in eo, qui parum christiane vixit, nam eo, quod mansit in Ecclesia, ostendit, se sperare et cupere, ut in ultimo vitae tempore per Ecclesiam cum Deo reconcilietur* (*P. II. n.* 514).

Beyond all doubt the absolution in all such cases is, and remains, invalid and ineffectual if the penitent after committing his last mortal sin did not make an act of contrition (*saltem attritionis*), because without this act of penitence he is incapable of justification.

With this disposition for attaining the state of grace presupposed, the reasons quoted for the presence of the necessary matter and intention in our case seem to prove the validity of the absolution at

least with the requisite *probabilitas* in order to lawfully absolve Remigius in danger of death *conditionate,* and we would urge the absolution under such conditions so much more, as the dying man in this state can no longer receive any other Sacrament.

II. May in our case the Viaticum also be given to the dying man? The *Rituale Rom.* answers: 1. *Iis, qui propter actatis imbecillitatem nondum hujus Sacramenti cognitionem et gustum habent, administrari non debet.* To children who have not attained the use of reason, and to those who since birth have been hopeless imbeciles, and have also at present no lucid moments, according to the present practise of the Church, the Viaticum cannot be given even in danger of death. 2. *Amentibus, seu phreneticis communicare non licet: licebit tamen, si quando habeant lucida intervalla, et devotionem ostendant, dum in eo statu maneant si nullum indignitatis periculum adest* (*ibid.*). From this it follows: (a) Except in danger of death, holy Communion cannot be administered to any one, who, when receiving it, is not conscious, or has not the use of reason. (b) To children of weak mind who are of the right age, to persons partly imbeciles, to the aged of weak mind, and persons of this kind holy Communion must be given, if they are capable to distinguish the same from ordinary food, at least at Eastertime, and in danger of death. (*S. Alph. Theolog, Moral.* 1. *VI. n.* 303. *c.*). If there is well-founded apprehension, or even danger, of desecration, the Most Blessed Sacrament must never be given, not even as Viaticum. *Si nullum indignitatis periculum adest. Rit. Rom.* 3. As specially concerning our case we quote from St. Alphonsus (*Theol. mor.* 1 *VI. n.* 302) : *de illis amentibus, "qui non semper caruerunt usu rationis, sed nunc carent"; in hoc sequenda est doctrina d. Thomae l. c. ubi sic ait: "Si prius, quando erant compotes suae mentis, apparuit in eis devotio hujus Sacramenti, debet eis in articulo mortis hoc Sacra-*

mentum exhiberi, nisi forte timeatur periculum vomitus vel exspuitionis."

St. Alphonsus states as reason that such a sick man desires the holy Viaticum *interpretative,* and that the reception of the same is necessary for his salvation if he fell into this state of total obscurity of mind while in a state of mortal sin, about which, however, he had yet made an act of imperfect contrition. That holy Communion in this case would effect justification the holy Teacher holds for morally certain in practise, as is evident from his solution of another question (1. *VI. n.* 619 *in fine*). Hence it is evident: The priest may and should give to Remigius the Viaticum, if this may be done without probable danger of irreverence to the sacred species, and if he cannot ascertain that the patient has lost consciousness in the state of complete impenitence. *Excipiunt D.D. si certo praesumatur talis in amentiam incidisse penitus impoenitens* (*S. Alph. l. c.*). Hence Lehmkuhl states (*P. II. n.* 146, 6), that to those who in the commission of a mortal sin (*in actu peccati*) lost consciousness, the Viaticum can only be given when it is the sole means by which they can probably still be helped, or if they, by a positively probable sign, give evidence of their conversion and change of mind. When in doubt, finally, as to whether the patient in his unconscious state can take the holy Eucharist *sine periculo vomitus vel exspuitionis,* a trial should be made with an unconsecrated host, or with part of one.

III. Respecting Extreme Unction we remark briefly that the same is to be administered to our patient all the more than holy Viaticum, partly because in such cases, according to the teaching of theologians, it remits mortal sin *per se etsi consequenter* (*S. Alph.* 1. *VI. n.* 731) partly because of all the Sacraments which such a dying man may receive, Extreme Unction is the one most certain to help him, because it not merely effects justification, when the patient previously

has made an act of imperfect contrition and after that has committed no mortal sin, but, according to the opinion of theologians, even then if he makes this act of contrition, if not made before, after the reception of this Sacrament, in a lucid moment. Marc (*Inst. moral.* 1397) puts the question: *An Sacramenta cum obice recepta, eo sublato, reviviscant?* and answers in the sense of St. Alphonsus: *Sacramentum Baptismi remoto per subsequentem dispositionem obice reviviscit. Ita communiter AA.—Multi probabiliter idem docent de Confirmatione etc. et de Extrema Unctione. Ratio, quia Ext. Unctio in eodem mortis periculo iterari nequit; consentaneum tamen bonitati divinae videtur, ut tales suscipientes non maneant privati gratia sacramentali, qua indigent.*

He who administers this Sacrament should be very careful never to make the condition: *Si dignus es, subintelligens: si es in statu gratiae*—for by this condition he would himself prevent the effect of this Sacrament most necessary for salvation. Only in case the priest cannot learn for certain whether the patient had even in his life a sufficient use of reason, he ought to give Extreme Unction with the condition: *si capax es;* for he who from birth has been of insane mind is incapable of receiving this Sacrament validly.

From these remarks about administering the last Sacraments to imbeciles it is plain that the priest who gave Remigius the Sacraments under the conditions mentioned, acted correctly and dutifully, that on the contrary the principle of the other, if carried out without discrimination, is theoretically false, and in practise may do great injury to the spiritual welfare of such unfortunate people.

JOHN SCHWIENBACHER, C.SS.R.

XLVIII. CAN AN INDEFINITE AND GENERAL ACCUSATION, EXCEPT IN A CASE OF NECESSITY, SUFFICE FOR CONFESSION, AND IS IT PERMITTED?

That a general accusation in case of necessity suffices for confession when it is impossible to make a specified accusation, as it not infrequently happens in the case of dying, is a universally known and certain doctrine of holy Church, and contained in the *Rituale Romanum.* It is another question, one upon which theologians differ, whether such accusation is satisfactory in respect to sins which one is not obliged to confess, venial sins for instance, or mortal sins already confessed and forgiven through absolution by a priest. A penitent, for instance, accuses himself of venial sins committed since the last Confession, and includes the sins of his past life with the words: "I also include all sins of my past life in this Confession," or the penitent is not conscious of any sins committed since the last Confession, so that this general statement is his whole accusation.

In discussing this question two points must of necessity be distinguished—the validity, and the lawfulness, of such a Confession. The first question is therefore whether such a general accusation, where *a materia necessaria* is lacking, is valid, even if the case is not one of necessity; the second, is it permitted?

I. Is it valid? This question in my opinion should be answered affirmatively, because confirmed by the *Ratio theologica,* as also by the opinions of theologians.

As regards the intrinsic reason, it is essential but also sufficient in the holy Sacrament of Penance that the confessor pronounces sentence and applies his jurisdiction. The confessor is made aware

from the penitent's accusation that since his last Confession he has not been guilty of grievous sin, and that for this reason he accuses himself of sins already confessed and forgiven. With regard to these sins the confessor reasons that the penitent confesses them with sincere contrition, detailed knowledge of these sins in particular is not necessary to him, as they have been already judged by a priest and remitted; the penitent, however, deserves (*de congruo*) on account of his renewed accusation a renewing of the grace dispensed in the Sacrament of Penance. If a general accusation such as this did not suffice for the essence of the Sacrament of Penance, it could not suffice either in the case of a dying person, nor in any other case where, on account of circumstances, it is impossible to confess special sins. Since, however, the nature of the Sacrament is unchangeable, and in case of necessity a general accusation is valid and sufficient where it refers to the *materia necessaria,* then it must be valid also when it concerns a *materia libera.* The reason why, except in the case of necessity, a general mention of non-confessed mortal sins is insufficient for Confession is found in the Divine Commandment, which directs the sinner to confess his sins with kind and number, so that the priest may be enabled to judge of the spiritual state of the penitent, and to decide whether he is worthy or unworthy of absolution. It is clear that he who acts contrary to this commandment cannot receive valid absolution. There is no such a commandment concerning venial sins, or mortal sins already confessed and forgiven; hence it suffices to confess these in general to the confessor with true contrition and firm resolve to avoid them; the confessor judges this and gives absolution in accordance.

The intrinsic reasons for this opinion are supported by the opinion of theologians. That many great teachers do not doubt the validity of such Confession cannot be disputed. St. Alphonsus, for instance,

in discussing the question whether an invalid Confession must be repeated, when the penitent renews his accusation to the confessor who has heard the invalid Confession decides (*Lib.* 6. *n.* 502) that this repetition is not required. He says: *Sufficit si confessarius recordetur status poenitentis, vel resumat notitiam ejus in confuso, et poenitens in communi se accuset de omnibus prius confessis. Ratio, quia, licet prima confessio non fuerit Sacramentalis . . . tamen ratificatio illius, dum poenitens deinde in generali se accusat de culpis confessis, conjuncta cum notitia antecedenter habita a confessario, bene sufficiens reputatur. Item, quia, ut probabiliter censet Croix l. c., talis confessio, cum facta fuerit in ordine ad absolutionem recipiendam, sufficienter etiam dicitur sacramentalis, quatenus ipsa etiam ad sigillum sacramentale.* If we apply this principle to our question the result is that a general accusation of the sins of the past life suffices when the sins are known to the confessor from a previous confession to such extent that he has at least a *cognitio confusa* of his penitent's state of conscience. The holy teacher goes further, after supposing the case that the confessor has forgotten all and yet contents himself with the general accusation of his penitent, he expresses the opinion: *Non poterit quidem licite absolutionem impertiri, ut recte dicunt Lugo n.* 642, *Croix n.* 1218 *et Laymann cum aliis supra citat., quia tunc non posset convenientem imponere poenitentiam. Si tamen tunc absolveret, facta confessione in communi, valide absolveret, ut Laym. c.* 9 *n.* 6. *in fine, et Croix* 1. *c. cum Aversa, Illsung et Diana.*

St. Alphonsus summits no reasons for his decision, but refers to Laymann, Croix, etc., so that he makes the teaching of these theologians his own. This teaching contains the answer to our question, and in proof thereof it will suffice to state the reason of their teaching, which Laymann expresses in the following words:

Ratio est, quam saepius dedi, quia specifica et particularis peccatorum manifestatio aut cognitio per se et simpliciter non est de essentia ac necessitate Sacramenti, sed tantum de necessitate praecepti divini, cui poenitens antea satisfecit. In another place (*cap.* 8. *n.* 2.) he discusses this point more extensively: *Est autem, diligenter hoc loco observandum, quod specifica et numerica explicatio omnium peccatorum per se et directe non pertinet ad necessitatem sive essentiam Sacramenti: quasi Sacramentum Poenitentiae numquam consistere possit, nisi integra omnium mortalium confessio fiat, sicut praeter alios notavit Palud. in* 4. *d.* 21. *q.* 2. *a.* 2. *concl.* 2., *Suarez, disp.* 23. *sect.* 1. *n.* 5 *et* 10. *Coninck. disp.* 7. *dub.* 1. *et dub.* 10. *concl.* 2. *Sed potius spectat ad necessitatem praecepti divini; cujus tamen voluntaria transgressio indirecte redundat in defectum Sacramenti, ut nimirum valide non suscipiatur. Nam ad substantiam Sacramenti Poenitentiae per se requiritur saltem attritio: haec autem consistere non potest cum peccato actuali, videlicet sacrilegio mortali, quod confitens committit unum vel plura peccata absque justa causa, seu per malitiam seu per crassam negligentiam reticendo.*

It follows from this that a general accusation, if not contrary to the Divine Commandment, suffices for the nature of the Sacrament of Penance. Croix likewise writes: *loc. cit.: Ad valorem absolutionis sufficit accusare se de peccatis in communi, quamvis hoc sit illicitum per se loquendo, secundum dicta a n.* 620, *and l. c. n.* 623: *Si quis extra necessitatem ita in genere tantum se accuset de venialibus, non determinando ullum in specie, valide quidem absolvitur, uti auctores communius cum Herinx d.* 3. *n.* 67. *et Bosco n.* 114. Suarez (*Disp.* 23. *Sect.* 1. *n.* 9.) in respect to general accusation of a dying man, who cannot specify his sins better, teaches: *Tandem, qui non haberet conscientiam peccati mortalis, si in illo articulo diceret se peccasse venialiter, sine dubio absolvendus esset,*

quandoquidem in venialibus, explicare numerum vel species, non est de necessitate confessionis, sed qui dicit se peccasse ad minimum dicit se peccasse venialiter; erit ergo materia ista sufficiens. To this the great teacher presumes an objection (*n.* 10) which he answers in the sense of the above-mentioned theologians. *Dices: hoc argumento probaretur illam confessionem peccati venialis in genere esse per se sufficientem in eo, qui non habet conscientiam peccati mortalis, etiam extra casum necessitatis. Respondetur, fortasse, speculative tantum loquendo, posse hoc defendi, tum propter rationem dictam, tum etiam quia* confitetur verba otiosa, censetur dare sufficientem materiam, et tamen non plus declarat conscientiam suam, quam qui dicit se peccasse venialiter, nec magis variat judicium confessoris. Nihilominus tamen practice hoc negandum est, propter incertitudinem materiae.* Not without importance for our question it is to learn how Suarez refutes the reasoning of theologians, who maintain that signs of contrition without the manifestation of a particular sin are not sufficient to grant absolution to a dying man who can no longer speak. The argument of these theologians was the following: *Ubi non datur cognitio alicujus rei particularis, non habet locum judicium prudentiae; ergo neque absolutio.* He answers (*n.* 7): *Aliud est scire alterum peccasse, aliud vero est scire alterum recognoscere et cum dolore subjicere clavibus sua peccata ut remittantur; et haec notitia specialis ibi confertur. Unde licet illa confessio quoad materiam remotam dicatur generals, quoad proximam est particularis, . . . Nam quod ex parte rei, de qua fit accusatio, debeat esse distincta, et quod hoc omnino sit de essentia, nulla sufficiente ratione probatur.* And *n.* 11 discusses this more closely. *Neque etiam refert, quod materia remota, quae est veluti objectum*

*To what extent this reasoning stands the test we will not examine here.

illius confessionis, sit universalis; quia absolutio immediate versatur circa materiam proximam, quae est particularis confessio, et effectus ejus etiam versatur circa hanc particularem personam et ita tota haec actio circa particularia versatur.

It is plain from the quoted passages that Suarez considers a general accusation sufficient for the validity of Confession, not only in the case of necessity, but also outside of it, when it relates to sins for which there is not the obligation by virtue of a Divine commandment to confess with kind and number. This opinion is supported by Herinx, who teaches it even more distinctly in the following words: *An qui non habet materiam necessariam, sufficienter etiam extra necessitatem confiteatur accusando se de omnibus peccatis in genere, aut de venialibus in communi? Resp. videri omnino quod sic: quia peccata venialia in sua specia non sunt materia necessaria confessionis: aliunde autem talis confessio est dolorosa de peccatis accusatio, ut ex dictis in conclusione patet. Quod enim extra necessitatem hoc non valeat in habentibus peccata mortalia, est, quia debent illa exprimi quoad speciem et numerum, quantum fieri potest.* To the list of theologians there extensively quoted in support of this opinion might be added many more who teach the same, as, for instance, Alexander de Alès, Sylvester, Burghaber, Dicastillo, Diana, Coninck, Voit, Reuter.

There seems to be sufficient evidence, therefore, that the validity of a general accusation in the Sacrament of Penance is based upon good reasons and excellent authority. And now we ask:

II. Is such a general accusation permissible? If our opinion were correct beyond all possible doubt, this question might at once be answered in the affirmative, assuming that there would be no objection from any quarter. The reasons given by us do not, however, remove every doubt concerning the validity of a general accusa-

tion; even if they did, such a general accusation, except in case of necessity, would offend against a universal binding usage of the Church, and it would not correspond to the special character which our Lord wished to give to the holy Sacrament of Penance. For the theologians teach that the confession of all mortal sins committed after Baptism is a Divine commandment, because the Saviour intended to appoint the priest a judge to whose decision the sinner's fate should be absolutely subjected, not according to human discretion but according to the laws of Divine justice and mercy. Each mortal sin incurs in Divine justice the loss of heaven, and mercy decrees to restore to the sinner that which he lost. The priest, who in the Sacrament of Penance has the task of restoring, if possible, to the sinner this lost title to heaven, must be made aware of every single mortal sin, and therefore the sinner must make known to the confessor all his mortal sins. To describe a matter exactly, it is not enough to state the *genus* to which it belongs: there must be added the *differentia specifica.* The word sin gives only the general idea of an act contrary to the Divine commandment. So does the expression Divine commandment give only the general idea of a commandment, and is specified only by the object of the commandment. The idea of sin, be it mortal or venial, finds its *differentia specifica* in the relation of the sinful act to a certain object aimed at by the Divine commandment. Therefore the expression, "I have sinned," is not one which indicates the essentials of a sin. Whatever the Saviour has ordained in regard to the Sacrament of Penance must be present at every administration of the same, provided it is possible and the object of the commandment is not lacking. The object, however, namely the priest's judicial power over the sinner, as instituted by Christ, is present in the case of all sins, confessed or not confessed. Therefore a general accusa-

tion, except in a case of necessity, is never sufficient for Confession, and there is always the obligation to make known to the confessor a specified sin.

This opinion is, with few exceptions, universally shared by theologians. I will quote their testimony in detail, so that the reader may better know and appreciate their teaching. In the first place, there is Suarez (*Disp.* 23. *Sect.* 1. *n.* 10.). He teaches, in regard to the validity of a general accusation, that it is not certain, and states immediately that, practically, it does not suffice. *Illam confessionem . . . esse per se sufficientem . . . practice negandum est, propter incertitudinem materiae. Dico ergo, licet homo absolute non teneatur species peccatorum venialium confiteri, tamen, supposito quod vult confiteri, teneri ad exhibendam materiam omnino certam, si potest, et ideo debere aliquod peccatum veniale in particulari suo arbitrio confiteri.* No less emphatically Laymann teaches (*Lib.* 5. *tr.* 6. *cap.* 6. *n.* 14. *et* 15) that one is obliged to make specified accusation. *Ad extremum moneo, admittendam non esse doctrinam Alensis p.* 4, *q.* 77. *mem.* 1. *a.* 1. *et* 2. *Syl. v. Confessio* 1. *q.* 13. *quod obligatus ratione statuti generalis aut particularis ad confitendum, si mortale non habeat, satisfaciat venialia generatim confitendo, videlicet dicendo se esse peccatorem, aut in multis deliquisse, saltem venialiter. Huic enim doctrinae communis bonorum Confessariorum praxis repugnat, qui extra casum extremae necessitatis sacramentalem absolutionem poenitenti non conferunt, nisi is certum aliquod, seu mortale seu veniale, peccatum confessus sit. Cum enim Sacramentum poenitentiae conferatur per modum judicialis absolutionis, apparet conveniens omnino esse, atque Sacramenti hujus institutionem postulare, ut afferatur et subjiciatur materia certa, quo absolutionis judicium magis determinate ferri possit, accedente praesertim Ecclesiae praxi atque fidelium sensu. Quare licet aliquis nulla lege ad confitendum*

venialia obligatus sit, posito tamen, quod sacramentaliter confiteri et absolvi velit, debet aliquod peccatum in specie explicare. Dico aliquod, seu unum sit seu plura. Neque enim necesse est, et plerumque non consultum, omnia venialia secundum speciem ac numerum sollicite colligere ad confessionem instituendam; sed hoc optimum consilium iis, qui a mortalibus abstinent, ut ea venialia, quae animos ipsorum magis gravant, et a quibus liberari desiderant, novo concepto dolore et emendationis proposito, cum humilitate aperiant. Elsewhere (*Cap.* 8. *n.* 7. *et* 8.) he puts the case that very illiterate persons confess to having sinned, but are incapable of specifying a single, even venial, sin, though the confessor examines them. Of them he says: *Respondeo cum Suar.* 1. *cit., Coninck, disp.* 7. *dub.* 1. *nu.* 6. *et dicimus talem hominem vere attritum esse de peccatis in genere, sed ob ruditatem et simplicitatem nullum in specie recordari aut explicare posse, etiam extra mortis articulum valide absolvi. Dico II. In praxi huic speculationi locum non esse. Ratio est, quia si poenitens qui non recordatur mortalis peccati, nihilominus sacramentaliter confiteri cupiat, is aliquod veniale in specie explicare debet, si possit, ut Sacramentum Poenitentiae congruentius et certius administretur, teste S. Thoma cit. quaest.* 2. *a.* 1. *ad* 2. *Quod vero poenitens id praestare possit, praesertim a Confessario examinatus et adjutus, semper praesumendum est; cum nemo tam hebes esse videatur, qui apprehendere et recordari nequeat, se in oratione negligentem fuisse, verbum otiosum aut noxium locutum etc. Etsi vero ponamus Confessarium ex circumstantiis judicare hominem tam rudem esse, ut nihil speciatim confiteri possit, tamen extra mortis periculum eum absolvere non debet; atque aperte illi dicere sacramentalem absolutionem non conferri, sed suae conscientia relinqui; cum materiam Sacramenti, quamvis examinatus, edicere nolit. Primo, quia haec est praxis bonorum Confessariorum. Secun-*

do, quia periculum est, ne talis homo, propter ruditatem suam, etiam vero de peccatis dolore careat, sed solum dicat se peccasse, quia audivit omnes homines peccatores esse. Tertio, quia, si supernaturalem dolorem habet, justificari poterit ab occultis peccatis suis per susceptionem Sacramenti Eucharistiae. Quarto, quia, si semel fateamur absolutionem extra extremam necessitatem fidelibus conferri posse nullum peccatum in specie explicantibus, ea facultate abutentur sacerdotes, contra sacramentalis confessionis legitimam institutionem et usum. Such persons may also be found in gross ignorance regarding necessary articles of faith. La Croix (*Lib.* 6, *part* 2, *n.* 622) says upon the same point: *Probabilius videtur non esse licitum extra casum necessitatis se in genere tantum accusare de solis venialibus, v. g. dicendo; accuso me de multis venialibus, quae per vitam feci, sed debere aliquod addi saltem in specie; tum quia est contra praxim Ecclesiae; tum etiam quia hoc Sacramentum est institutum per modum accusationis et judicii; haec autem, per se loquendo et ordinarie, fieri debent circa materiam saltem in specie certam et determinatam. Suar. d.* 23. *s.* 1. *n.* 10. *Aversa* § *quartò. Bosco d.* 7. *s.* 9. *a nu.* 115 *Con. et Bonac. apud. Diana p.* 3. *t.* 4. *R.* 66. *contra Dicast. n.* 761. *Burgh. cent.* 3. *casu* 41 *et alios.* What Croix says here about venial sins, applies also to mortal sins already forgiven by Confession.

Bonacina (*Disp.* 5. *qu.* 5. *sect.* 2 *punct.* 2. § 3. *diff.* 2. *n.* 15 *et* 17) also requires the confession of a specified sin: *Quaeres quinto, utrum qui non habet peccata mortalia, sed tantummodo venialia, satisfaciat in genere dicendo se venialiter peccasse, non explicata specie vel numero peccatorum venialium: Respondent aliqui doctores satisfere. Ego vero cum Suarez disp.* 23. *sect.* 1. *num.* 10. *Conincho disp.* 7. *dub.* 1. *n.* 6. *et aliis, existimo in praxis explicandum esse aliquod peccatum. Ratio est, quia, licet non teneamur confiteri pec-*

cata venialia, tamen ex suppositione quod velimus confiteri, tenemur materiam omnino certam exhibere, ut patet ex supra dictis de materia Sacramentorum; consequenter tenemur in particulari aliquod genus seu speciem peccati venialis explicare, quoties loqui et illud in particulari exprimere possumus, quamvis non teneamur illa quoad numerum explicare. Connick anticipates the objection: *Dices: Hinc sequeretur nos licite absolvere rudes quosdam homines, quo, cum ad confessionem veniunt, dicunt quidem in genere se peccasse, et de eo dolere, ac petere veniam et absolutionem, quantumcumque tamen a confessario examinantur, non possunt vel unius peccati venialis a se commissi in particulari recordari. Resp.* (1) *Si tales vere apprehendant se peccasse, et de eo attriti vere intendant confiteri, eos valide absolvi. Resp.* (2) *Communiter tamen, nisi subsit gravis aliqua necessitas, non debere absolvi; quia communiter non videntur apprehendere quid sit peccatum, aut se vere Deum offendisse . . . Adde, omnino convenire, ut, quantum fieri potest, hoc Sacramentum numquam conferatur, nisi confitenti aliqua peccata in particulari, quia ex confessione illa generali confusa solum quaedam et vaga cognitio status poenitentis habetur. Decet autem judicem ex cognitione determinata ferre sententiam, quando necessitas ad aliud non cogit.*

Catalani (*Part.* 3. *qu.* 6. *cap.* 7. *n.* 9.) teaches the same and makes use of almost the same words as Bonacina: *Petes, an qui sola venialia confitetur, quia mortalia non commisit, sufficienter se explicet in sacramentali confessione, si dicat: peccavi venialiter, non explicando numerum vel speciem ipsorum? Resp. quamvis non sit obligatio confitendi peccata venialia, ex suppositione tamen quod quis ea velit subjicere clavibus, tenetur, si non quoad numerum, saltem quoad speciem ea exprimere, ut exhibeat materiam omnino certam; sic enim debet esse materia cujuscumque Sacramenti, quando fieri po-*

test; ergo, si poterit species venialium experimere, debebit id efficere. He quotes Suarez, Coninck and Bonacina.

Herinx (*Part.* 4. *tr.* 4. *disp.* 3. *n.* 67) inclines to the opinion that a general accusation not only suffices for the validity of the Sacrament, but that it is permissible to put into practise; however, he does not wish to press his opinion. He writes: *Non est tamen, hoc facile practicandum; tum quia obstat usus communis, tum quia diversi censent id non licere, etsi ego non videam ullum solidum fundamentum. Potest proinde generalis clausula, qua poenitentes sub finem confessionis se accusant de omnibus peccatis, ad hoc servire, ut, si forte seriu⁵ dolor se non extendat ad levia et quotidiana, quae poenitens jugiter ac velut ex quadam consuetudine confitetur, nihilominus valida sit absolutio, si adsit dolor aliquis de peccatis, se extendens saltem ad gravia aliquando commissa, in quibus etiam verificatur ista clausula.*

Herinx, by maintaining that there is no valid reason for the opinion that a general accusation be not permissible, goes too far, as is shown in what has been said above. He is correct, however, in remarking that in the accusation of small venial sins, made from habit at every Confession, a true contrition may easily be lacking. This did not escape the wisdom of St. Alphonsus; he not only draws the particular attention of the confessor to it, but he also gives the remedy for averting this evil. It will not be unprofitable to conclude this argument with the practical hints which this holy doctor has left us in this respect. We will quote them literally from his *Praxis Confessarii* (*Lib.* 6. *n.* 449. *dub.* 1. *n.* 71.): *Cum sit communis sententia, grave esse peccatum et sacrilegium, absolutionem recipere super levibus peccatis confessis sine vero dolore et proposito, nec sufficere dolorem de multitudine seu de numero immodico talium culparum, absque dolore de aliqua in particulari, prout tenuimus*

contra quorumdam opinionem, facile metuendum est hujusmodi confessiones sacrilegas esse, aut saltem invalidas. Quare satagat confessarius non indistincte absolvere ejusmodi poenitentes; nam etiamsi illi sint in bona fide, ipse tamen non poterit a sacrilegio excusari, si absolutionem eis impertiatur, qui ad absolutionem non satis dispositi judicari possunt. Propterea, si poenitentem sine peccato vult absolvere, aut eum disponere curet ad dolendum praesertim de aliqua levi culpa, a qua ille magis horreat, aut ei insinuare ut confiteatur aliquod peccatum grave vitae anteactae contra aliquod praeceptum (sufficit hoc confiteri in generali absque numero), ut habeat materiam certam absolutionis. And in another place he adds: *Quot confessiones invalidae (quae in se vera sunt sacrilegia) fiunt ab Confessariorum hac in re negligentiam!*

The reasons upon which we based the discussion of our second question justifies the conclusion that a confessor who would follow a contrary practise would act with daring, and would be guilty of grievous fault.

JOSEPH AERTNYS, C.SS.R.

XLIX. JURISDICTION

The priest Severinus, well acquainted with Prudentius, the bishop of another diocese, visits this diocese and requests jurisdiction to hear Confessions. Prudentius tells him: "Whenever you are in my diocese you have jurisdiction to hear Confessions, together with faculty to absolve from cases reserved to the bishop." Two years after this Prudentius dies. Severinus now asks his confessor: 1. Does the jurisdiction which Prudentius gave me continue until a new bishop takes office, and just when will it terminate? 2. While Prudentius still lived a change was made in reserved cases; does my faculty continue in their respect? 3. Upon one occasion I received there jurisdiction to hear the Confessions of nuns; was I, in their case, permitted to exercise authority in reserved cases?

The answer is not difficult. *Ad.* 1 Prudentius had said: "Whenever in *my* diocese," etc. It may be claimed that, as Prudentius is dead and the diocese is no longer *his,* the jurisdiction was given by Prudentius only for the duration of his administration. This interpretation appears artificial and not justified. Prudentius uses the expression *my* diocese instead of mentioning the name of the diocese, and he would have expressed himself more definitely if he meant to authorize Severinus only for the period of his administration. It is therefore to be held that the bishop did not restrict the jurisdiction to the time of his own life, nor to his episcopal administration. The granting of the general jurisdiction is a *gratia facta presbytero,* which even *re integra, i. e.,* if the priest during the administration of his friend had not once made use of it, is not affected in its duration by the death of the awarding bishop: *arg. c.* 36, *in VI.,* 3, 4: *hujus-*

modi concessio (quam, cum specialem gratiam contineat, decet esse mansuram) non expirat etiam re integra per obitum concedentis.

Severinus may accordingly continue to make use of his jurisdiction, not only during the vacancy, but even later, unless, of course, the new bishop revokes all faculties granted by his predecessor. Propriety requires, however, that Severinus should acquaint the new bishop with the powers granted to him, and request confirmation of the same.

Ad. 2. This question may also be answered in the affirmative, for the faculty to absolve from reserved cases was not granted in a restricted sense, regarding only certain reserved cases, or the reserved cases then prevailing, but in a general sense, and there is no reason for restriction to the reserved cases which were in force in the time of Prudentius: *Arg. reg. jur.* 15, *in VI.: odia restringi et favores convenit ampliari.* Whether the reserved cases were lessened or increased by Prudentius, Severinus enjoys in this respect unlimited jurisdiction. If, however, the new bishop has created new reserved cases, there is therein contained a silent revocation of the general jurisdiction formerly granted to confessors for these cases, and Severinus cannot thereafter absolve from these new reserved cases, no more than the priests of the bishop's own diocese, without explicit new delegation.

Ad. 3. What has just been said about the general validity of the faculty to absolve from reserved cases finds application also in this regard.

Severinus could *pro casu* absolve also nuns, not only from not reserved, but also from reserved sins.

Dr. Rudolf R. v. Scherer.

L. DOUBT BEFORE CELEBRATION

Father Caius, about to celebrate Mass, was in doubt if, perhaps, he had not grievously sinned by voluntary consent to a certain thought. While not positive of the fault, he was neither certain of the contrary. He decided to celebrate, because, according to the opinion of many theologians, the obligation to confess in such case is not certain. Neither did he feel obliged to awaken perfect contrition, since he reasoned that positive contrition cannot be felt about a doubtful matter. With trepidation he read subsequently in Elbel (*Part II. n.* 166, *p.* 65 of the new edition) that this great theologian and probabilist teaches that the view of confession being necessary in such a case should certainly be adhered to *omnimodis sectanda.* He decided to submit the question to his confessor. He read also Elbel's opinion that a priest need not abstain from celebration if in doubt whether he had taken a drink of water before or after midnight. In the following night Father Caius awakened and, feeling great thirst, he drank some water, without bothering about the time, and said Mass the following morning, not, however, without some concern. He submits both matters to his confessor. What must the latter reply?

1. Concerning the first point, we may say that it seems certain to present-day moralists that in this case, before the reception of the holy Communion, or before celebration, there is no obligation to confess. Thus Ballerini, Lehmkuhl, Hilarius and others (even St. Alphonsus maintains this view, at least in his work *Homo Apostolicus, tr.* 15. *n.* 34. *and tr.* 16. *n.* 31, where he reverses the opinion stated in his larger work, *n.* 475). I am not of opinion that the

speculative doubt of commission or non-commission of a mortal sin can generally (*communiter*) by the attending circumstances be resolved into certainty one way or the other. My pastoral experience has shown that such a doubt under many circumstances may remain indissoluble, and under such condition there exists no strict obligation to confess. The Council of Trent obliges to Confession only those who are conscious of mortal sin; the doubter, however, is not conscious of mortal sin. Elbel, otherwise a pronounced probabilist, is here, after citing that this argument is accepted by many theologians, not consistent. The cause of this inconstancy is the fact that Elbel leaves almost entirely out of consideration the safety which the act of perfect contrition affords, and upon which he, like many other moralists of his time, does not venture to rely. To arouse this act is, of course, of obligation, unless in the case of imperfect contrition Confession is made, because there is to be avoided the danger of receiving the Most Blessed Sacrament in a manner that its effects would be lost. It would, no doubt, be most deplorable if a priest were not conscious, with moral certainty, of having perfect contrition, for there is hardly a subject about which he should instruct the people more frequently and impressively than the act of the love of God and the contrition proceeding from it. Through this act is given the certainty of the state of grace. If any doubt should remain, even in one well informed, I agree with Lehmkuhl (*I. n.* 150), who says that there is no obligation to seek further certainty (after having done the best one could and what was considered necessary). I should not even advise the priest to confess, at least not one who confesses every week or fortnight, since the advice to confess doubtful sins, while proper in the instance of the laity who easily deceive themselves in regard to their sins, is less in place for the well-informed priest who celebrates daily and confesses

regularly within the stated times. It may be asked: Is it possible to awaken certain contrition about an uncertain sin? It may be admitted that it cannot be done because contrition must contain the consciousness of committed sin; but the obligation to awaken the act of contrition, or at least the perfect act of charity which virtually includes contrition, remains, because without moral certainty of being in the state of grace one must not approach holy Communion. He who makes an act of perfect love of God, and by reason of this love repents of all previous sins he may have committed, has surely complied with this obligation.

2. As concerns the second point, the drinking of water, Father Caius did not correctly, or at least not fully, comprehend the teaching of Elbel (*n.* 167), to which to-day, as in Elbel's time, the moralists *satis communiter* adhere. This teacher says that when in doubt whether he ate or drank before or after midnight, one is not obliged, for this reason, to abstain from holy Communion; it is not positive that he has not been fasting, therefore reception of the Most Blessed Sacrament is not prohibited to him. It is nowhere asserted, as Elbel rightly observes, that the Church wishes her commandment be complied with so rigidly, that even those who doubt whether their fast has not been broken should deny themselves holy Communion. Father Caius, however, has overlooked what Elbel has to say, in conclusion, about the *dubium antecedens*. It is not permissible to cause such a doubt by voluntary action. It is the quite elementary condition of probabilism that we have done what we ought to have done, or what we could, in order to avoid uncertainty. We are obliged to take care that we keep the Commandments, and that we do not transgress their prohibitions. In the Commandment and prohibition, of which there is question here, is conveyed the injunction that we must avoid any uncertainty, and not cause it to

exist, as to whether we are fasting from midnight or not. He, therefore, who drinks something, and purposely refuses to ascertain what time it is, cannot avail himself of the probabilistic principle. By receiving the Blessed Sacrament he would confirm his grievously sinful indifference as to whether the Commandment of the Church in this important matter is observed or not. If Father Caius had in his simplicity intended to follow the probabilistic principle, then he has subjectively not sinned; in reality, however, this application of the principle is not allowed.

If, in this case, the celebration is imperatively necessary, and if Father Caius has foreseen the necessity, he will have to proceed like one conscious of a grievous sin.

JULIUS MÜLLENDORFF, S.J.

LI. WINE MIXED WITH WATER CONSECRATED

By oversight the Mass wine had been put into a bottle half filled with water, and the mixture was used for holy Mass by two priests who celebrated at the same time. When the unfortunate mistake was discovered one priest was at holy Communion, and had just consumed the wine mixed with water; the other priest, however, without having noticed the state of facts, had finished holy Mass and returned to the sacristy.

Question: What must these two priests do, in order to comply, to their best ability, with the Divine and ecclesiastical law of the integrity of the holy Sacrifice of the Mass?

1. It is to be remarked, first of all, that the mixture here spoken of, water and wine, is beyond all doubt a wholly invalid *materia consecrationis.* The opinion of some theologians that the consecrating material may be one-third water and two-thirds wine is rightly restricted only to the case *si vinum sit generosum* (*St. Alph.* 1. *VI. n.* 210), and for security's sake the rule is made *consultum est, . . . ut Sacerdos in calice offerendo non excedat octo vel decem guttas aquae. Marc. n.* 1524.

2. As regards the priest who has partaken of the invalidly consecrated *materia,* the rubic of the Missal prescribes precisely what he has to do. According to *Rubr. Tit. IV. de defectu vini n.* 5, he must, if possible, cause both substances to be brought, host and pure wine, then *mentaliter* offer and consecrate both (*incipiendo "qui pridie,"* etc.), and finally consume both and conclude holy Mass. In this case the holy Sacrifice is complete and the obligation of the stipend is complied with. (A complete exposition of this rubic is found in the splendid work of Benedict XIV., *De Sacrosancto Missae Sacrificio, lib. III. cap. XV.*)

3. If, on account of a much smaller quantity of water, the *materia* may be considered as doubtful, then both substances must nevertheless be duplicated, but consecrated only conditionally: *sub conditione; si prior materia non fuerit consecrata* (according to *St. Alphonsus I. VI. n.* 206, but opposed by the opinion of other theologians), in order that, in case the former consecration was valid, there is not committed an *iteratio Missae,* or a *sacrificium truncatum.*

4. For the other priest, who before discovery had already returned to the sacristy, the rubric contains no instruction, and most authorities who speak the *defectu vini,* leave him without counsel. He remembers in his perplexity the very probable opinion of theologians that the priest, after his return to the sacristy, if he has not taken off the sacred vestments, may consume any fragments of the Sacred Host consecrated at the just concluded sacrifice. (*St. Alph.* I. *VI. n.* 251) and the precept that, if the celebrating priest, after the consecration of one species should faint or die, the holy Sacrifice should even after interruption of about an hour be continued and finished by consecration of the second species (*St. Alph.* I. *VI. n.* 355). He concludes, therefore, that in his case the act of sacrifice was not concluded so absolutely that he might not return at once to the altar, and by consecration of proper species validate the sacrifice, provided it can be done without giving scandal to the people.

This reasoning, however, is incorrect. Cardinal Gousset states: The priest who becomes aware of the essential faultiness of the sacramental materia *after he has left the altar, must not return to the same* in order to repeat the consecration (*II. vol. n.* 175). Scavini asserts the same (*lib. III. n.* 177): *Si Sacerdos jam ad sacristiam reversus cognoscat aquam pro vino consecrasse, non amplius debet defectum supplere; quia Missa jam absoluta est. Imo dicunt, si sacerdos defectum cognovit post ultimam benedictionem, nihil sup-*

plendum; secus magis videretur iteratio Missae, quam reparatio defectus. Ita antiquum Missale Romanum Venetiis inpressum 1557.

The priest in our case has therefore communicated validly, but the Mass, on account of the one invalid materia, was invalid as a sacrifice, *juxta sententiam communiorem et probabiliorum* (*St. Alph.* I. *V. n.* 306), whence results for him the obligation of offering another valid holy Mass for the stipend received for this particular Mass.

JOHN SCHWIENBACHER, C.SS.R.

LII. RITE OF EXTREME UNCTION, WHEN SEVERAL PERSONS ARE TO RECEIVE IT AT THE SAME TIME

The Ritual provides the rite by which several children or adults may be baptized at one time. It contains, however, no explicit instruction for the case that Extreme Unction is to be administered simultaneously to two or more patients, occupying one and the same room, a case which sometimes occurs in hospitals and during epidemics. The renowned author of the *Sacrae Liturgicae Praxis,* De Herdt, treats this case in Vol. I. (*Pars. VI. No.* 24. II.) in his work, and Hartmann, in his *Repertorium Rituum* (§186, *n.* 3) states: "If several persons at the same time are to receive Extreme Unction, all prayers without accompanying ceremonies are to be spoken in the plurality, but those to which are joined ceremonies are to be said individually."

In justification of this procedure De Herdt refers to the baptismal rite, and claims that what the Ritual allows in administering Baptism to several at the same time, cannot be unallowable in administering Extreme Unction, and here also should the rule apply: *ut preces, quae cum actionibus non conjunguntur, semel tantum dicantur; actiones vero cum precibus adjunctis super singulis repetantur,* this all the more because a continued repetition of the long prayers would not only be a hard task for the priest, but also irritating to the patients in the room. About changing into the plural form of prayers to be said only once De Herdt remarks: *Saltem si haec mutatio commode fieri possit, aliter singulariter dicta de unoquoque seorsum sumpta intelliguntur.*

Concerning the various ceremonies, or actions, to which De Herdt no further refers, the prescribed anointings are, of course, to be

given each patient separately. Besides these the Ritual for Extreme Unction prescribes only three other *actiones:* 1. The presenting of the crucifix to be devoutly kissed by the patient: *Aegroto Crucem pie deosculandam porigit (Rit. Rom.).* Wherever so prescribed during the ceremony it must be handed to each patient separately. 2. The blessings over the patient, accompanying certain prayers and bestowed with the priest's right hand (in some dioceses with the crucifix). These blessings may be given, according to the universal usage of the Church, without doubt in the plural form *sub uno* to all recipients simultaneously. 3. Finally, the Ritual prescribes the laying on of hands. Such laying on of hands is also prescribed in the baptismal rite, particularly in the one for the Baptism of adults. For the baptismal rite the Roman Ritual ordains explicitly: *Sacerdos imponit manum super Electum, vel, si sint plures, super singulos. —et oratio dicatur in numero plurali;* and again: *si plures fuerint, imponat manum super capita singulorum, A dicit eumdem Exorcismum in numero multitudinis, et genere suo.* If we follow the baptismal rite as guidance for our subject, then in Extreme Unction the prescribed imposition of hands is to be made *super singulos, super capita singulorum,* but the accompanying prayers are to be said *in numero plurali* just once, over all. Since, however, the first imposition of hands stands in close relation to the sacramental anointing and form, and the accompanying prayer, *extinguatur in te,* etc., being very brief, it would recommend itself to repeat the prayer for each individual patient.

All other prayers of Extreme Unction may be said once, in the plurality, if several patients receive it at the same time, and thus the sacred function will be greatly simplified. This applies all the more to the prayers said while giving holy Communion to the sick, if this Sacrament is administered at the same time.

The S. Congregation of Rites, by decree of August 9, 1922, orders that in the new edition of the Roman Ritual the following instruction be added to the instructions which precede the administration of Extreme Unction: "If this Sacrament is administered to several sick persons at the same time, the priest shall present to each the crucifix to be kissed, then he shall say once in the plural the prayers which precede the anointing, anoint each one individually with the prescribed forms of words, and after this say the prayers that follow once in the plural."

The same decree rules that in case of necessity the Apostolic Blessing may be given by beginning at once the formula: "Ego, facultate mihi ab Apostolica Sede tributa, indulgentiam plenariam et remissionem omnium peccatorum tibi concedo, et benedico te. In nomine Patris (makes sign of the cross over the dying person), et Filii, et Spiritus Sancti. Amen." The S. Congregation further states that a rubric should be added to the Roman Ritual to the effect that if the Apostolic Blessing is given to several sick persons at the same time, all the prayers and forms are said once only in the plural (*Acta Ap. Sedis,* vol. XIV, page 506).

JOHN SCHWIENBACHER, C.SS.R.

LIII. RECONSECRATION OF AN *ALTARE PORTATILE*

The question about reconsecration of an *altare portatile* is frequently brought up. It has often been laid before the *S. Cong. Rituum* and apparently contradictory answers have been given. This is due probably to the fact that the question was accompanied by special circumstances, which, while influencing the answer of the Congregation, were not mentioned in the text of the decision. De Herdt's *Sacrae Liturgiae Praxis,* says about it (*Tom.* 1, *p.* 243, § 177): *Si sepulchrum sit integrum et obseratae s. reliquiae, sed deletum sigillum episcopale super sepulchrum cera hispanica impressum; tunc juxta decretum* 23. *Maj.* 1846 *altare portatile nova indiget consecratione, quia non constat de reliquiarum identitate et authenticitate: sed juxta decretum* 11. *Martii* 1837 *in tali altari celebrari potest, dummodo lapis consecratus seu altare portatile sit integrum; et juxta decretum* 23. *Sept.* 1848 *altare portatile, cujus fractum est sigillum, vel cujus non existit sigillum, quod reliquiis in sepulchro inclusis apponitur, non amittit consecrationem, nisi fractum sit sepulchrum, vel ejus operculum, aut si hoc amotum fuerit. Ad intelligenda haec decreta, quae contrari videntur, considerandum est sigillum episcopale non esse quid essentiale consecrationis altaris portatilis, uti etiam patet ex pontificali, in quo de altaris portatilis consecratione neque mentione fit sigilli episcopalis sepulchro apponendi: ita ut sigillum tantummodo ut signum seu testimonium authenticitatis reliquiarum factaeque consecrationis altaris considerari debet. Proinde altare portatile cujus sigillum super sepulchrum hispanica cera impressum non existit, seu deletum est, consecrationem non amittit, nisi fractum sit sepulchrum vel ejus operculum*

seu parvus ille lapis, qui claudit repositorium reliquiarum, aut etiam solummodo si hoc operculum amotum fuerit; neque nova indiget consecratione, modo ex continuo usu vel aliter certo constet, altare debite esse consecratum. Si autem sigillum episcopale deletum sit, et ex continuo usu vel aliter certo non constet, altare debite esse consecratum, ut si altare extra usum fuerit, a laicis servatum etc., nova indiget consecratione, licet etiam s. reliquiae observatae inveniantur, juxta decretum citatum 23. Maji 1846, quia non constat de reliquiarum identitate et authenticitate, nec consequenter de altaris consecratione.

The decision of May 23, 1846, above referred to, is quite similar to the one of February 28, 1880, as above reprinted. But even in this case, the Congregation does not maintain the essential necessity of the episcopal seal, for in the same inquiry: *dubium II utrum sepulchro apponi possit et debeat sigillum Episcopale?* it answers: *apponi posse: i. e.,* therefore, if the stone is really consecrated, the seal may or may not be added afterwards; in each case it is allowed to use the altar.

The noteworthy point of the decision of February 28, 1880, lies in the words: *nisi constet (Altaria) rite fuisse consecrata.* This proof requires only a *certitudo moralis,* namely, that the altar-stone had always been considered consecrated, has always been in use, and that there is no visible sign of an opening of the locking-stone (*operculum*). Compare with this the wording of the above cited decision of March 11, 1837. *Dub. II. An interdicenda sunt Altaria si existat sepulchrum absque sigillo? Dub. III: an id saltem exequendum quando apparet sepulchrum sed nullum extat oppositi sigilli vestigium?—Resp. Dummodo lapis consecratus seu altare portatile integrum sit, in eo celebrari potest.*

Let us consider the matter *in praxi.* The locking of the altar-

stones takes place at the consecration, and the little stone cover is firmly cemented. Then these consecrated stones are placed in reserve, and they are only sealed when the bishop causes them to be distributed. The seal is simply placed upon the stone by someone in the episcopal chancery, to show which bishop has performed the consecration. It is well known that sealing wax falls easily off the hard stone. An awkward pressure, the carelessness of a sexton while decorating the altar, suffices to knock off the brittle seal, especially when not placed in an appropriate depression, but on the surface of the stone.

Such decisions of the *S. Congregatio* cause considerable anxiety to pastors, and if the seal on the portable altar is broken or entirely gone, they think the stone must be immediately dispatched to the bishop for reconsecration, when in fact it has been in constant use for a long time, and has been examined in many visitations. Hence the rule is to examine carefully the locking-stone and its cementing, and if everything there is found solid and in place, there is no need to be anxious and troubled about presence or absence of the seal.

The Code rules that the immovable consecrated altar loses its consecration if the altar or table of stone gets separated, even for a moment, from its support. Both the immovable altar and the portable altar stone lose their consecration (1) by a large break, (2) by removing the relics, by breaking or removing the cover of the cavity in which the relics are deposited, except when it is removed by the Bishop or his delegate. A slight break or crack of the cover does not execrate the altar stone and any priest may close up the crack with cement (Canon 1200).

F. v. Oer.

LIV. MUST AN INFORMER MAKE RESTITUTION FOR THE INJURY CAUSED BY HIS DENUNCIATION?

Fabian harbors hatred towards Sebastian and seeks an opportunity to revenge himself upon him. This opportunity offers itself when he discovers that the latter has undervalued dutiable goods, which he imports, and so defrauds the Customs. Fabian informs the authorities, and in consequence Sebastian is caught in the act and sentenced to the usual fine, which, of course, he must pay.

Question.—Has Fabian sinned against Sebastian, against justice, and is he obliged to make restitution?

Answer.—Fabian has sinned grievously against the love of the neighbor, because his denunciation was inspired by hatred, but not against justice, and, therefore, he is not bound to make restitution (*compensatio*), because the informer has violated no strict right of the other. In consideration of the public welfare everyone has the right, though not the duty, to report for punishment a person who commits a punishable act. Evidently he would not have acted unjustly if his hatred of Sebastian is left out of consideration; the motive, or interior intention, cannot change anything in this respect; it cannot make wrong something that of itself is right and lawful.

M. J. SCHLAGER, D.D.

LV. A DIFFICULT CASE PRESENTED BY THE CONFESSION OF A BRIDE

Bertha comes to Confession in preparation for her marriage and acknowledges that she is pregnant by a third party, the intended husband knowing nothing of the fact. May she enter the married state without revealing this to the bridegroom?

In regard to marriage, distinction is made between such defects and circumstances that violate the bridegroom's vested rights, and such that do not interfere with his actual rights, though they render the marriage less desirable. To the latter belong poverty, inferior position, lack of beauty, loss of virginity, and the like. As regards these things the bride must not positively deceive the bridegroom by lying or dissimulation, but neither is she obliged in justice to make them known, not even if expressly asked about them.

As regards the *corruptio,* St. Alphonsus teaches positively that if the bridegroom makes inquiries about it: *potest dissimulare aequivoce respondendo; tunc enim non fingit, sed occultat vitium occultum. L. VII.* 864. It is different with defects which detract from the bridegroom's right, as do, for instance, infamy, sexual disease, etc. In this class of defects must be included pregnancy by a third party. Lacroix confirms this explicitly (*L. VI.* 183). A sin against justice is committed by those who sell corrupted merchandise as perfect, particularly if the defect is concealed. Even if the bride has the firm intention to make compensation to the bridegroom for the damage resulting by the marriage (*alendi prolem alienam*), it is a question whether she will be capable of doing so. The fact that a wife who gives birth to a child by adultery is not obliged to make her

husband aware of the fact, has no relation with our case. There is an indissolubly contracted marriage, *quoad vinculum,* and most deplorable consequences would result for the whole family from such revelation, while here a bride is only preparing to contract matrimony, and from the revelation she alone would be at a disadvantage, and in a collision of the law the right of the innocent prevails over that of the guilty. It follows that Bertha must make known her condition to the intended husband, as also St. Alphonsus teaches (*L. VII. n.* 865 *excepitur* 1). In case she is not aware of this obligation, the confessor must instruct her, if she herself asks for information; is she *bona fide* and may be expected to obey, she is to be so instructed, also if she does not ask. If, however, the confessor has good reason to suppose that his direction will be fruitless, he had better keep silent and leave her *bona fide.*

What is to be done if, as in our case, the woman makes her Confession directly before the marriage? And if great danger is present that through such a revelation the marriage would even at the last moment be prevented to her public disgrace? Here it is necessary to discriminate. It is possible that the bridegroom will not become aware that the child has someone else for father. If this may be presumed, the bride cannot be obliged by refusal of absolution to incur great disgrace by revealing the truth, provided she is of the firm intention to do all in her power to avoid any injury to husband and legitimate children. To such an extraordinary step, as the revealing of the true situation, which would require a truly heroic act, Bertha cannot be obliged. The loss of honor and good name predominate, because of higher degree than a possible harm to the husband's fortune. If, however, it is probable, or even certain, that the bridegroom will learn the true state of affairs, for instance, by the early time of the birth, then I should again advise to discriminate

according to the impression which the bride's deception is likely to make upon the man. Possibly it may be supposed in good reason that the husband will accept the inevitable and forgive. Presuming this she may even in such case keep her silence; not, however, if the deception, as really must be feared, will result in a very unhappy marriage, or if it must even be expected that the husband will have recourse to the courts and institute proceedings for separation, or even divorce, on this ground. In this case the evil consequences are of greater account than the injury to her honor, and she must withdraw even at the last moment.

GEORGE FREUND, C.SS.R.

LVI. DOES THE RESERVATION OF THE *ABSOLUTIO COMPLICIS* EXTEND TO THE CASE OF ONE WHO HAD TRANSGRESSED BEFORE ORDINATION?

It is known that Pope Benedict XIV., in his constitution *Sacramentum Poenitentiae,* of 1741, has prohibited all priests under penalty of excommunication, specially reserved to the Pope, and nullity of the absolution given, to hear the Confession of and absolve the *complex in peccato turpi* (except in case of most urgent necessity). The decree ordains: *Omnibus et singulis Sacerdotibus tam saecularibus quam regularibus cujuscunque ordinis et dignitatis, tametsi alioquin ad confessiones excipiendas approbatis et quovis privilegio et indulto, etiam speciali expressione et specialissima nota, auctoritate Apostolica et nostrae potestatis plenitudine interdicimus et prohibemus, ne aliquis eorum extra casum extremae necessitatis, nimirum in ipsius mortis articulo, et deficiente tunc quocunque alio sacerdote, qui confessarii munus obire possit, confessionem sacramentalem personae complicis in peccato turpi atque inhonesto contra sextum Decalogi praeceptum commisso excipere audeat, sublata propterea illi ipso jure quacunque jurisdictione ad qualemcunque personam ab hujusmodi culpa absolvendam, adeo quidem, ut absolutio, si quam impertierit, nulla atque irrita omnino sit; et nihilominus se quis confessarius secus facere ausus fuerit, majoris quoque excommunicationis poenam, a qua absolvendi potestatem nobis solis, nostrisque sucessoribus duntaxat reservamus ipso facto incurrat.*

Plain and circumspect as this papal definition is, it yet leaves room for the question whether it affects a priest who had failed with his penitent before ordination. Reliable and prominent moralists, *e. g.*

Gury, *Casus Consc.* (*p.* 11. *n.* 639), *Scavini* (*Theol. Mor. lib. III. n.* 485), Pruner (*Handbook of Moral Theology, p.* 471), and Lehmkuhl (*Theol. Mor. vol. II. p.* 658) answer this question emphatically in the affirmative. The latter writes: *Communi opinione et ex fine legis non videtur requiri, ut peccatum commissum fuerit post sacerdotium susceptum. Et revera si verba sumuntur, ut sonant, distinctio inter peccata post sacerdotium et ante sacerdotium commissa fieri posse non videtur.*

Gury illustrates this view by the following concrete case: The student Liborius had sinned with Flavia *contra sextum.* After he had become priest, *poenitentia serio peracta,* she appeared in his confessional and declared that until now she has not confessed this sin owing to her shame, and that she could not make up her mind to confess it to anyone else. After some reflection Liborius consents to hear Flavia's Confession and absolves her, because he reasons that the sin committed with Flavia before ordination is not subject to the reservation. Did Liborius decide and act correctly? No, says Gury, for through the reception of Holy Orders the bond of complicity is not dissolved and Liborius is after as before the ordination still *complex peccati,* and as such in respect to the sin committed with Flavia deprived of the power of absolution.

This view the writer was for a long while inclined to take. When recently, however, due to a discussion of this matter, he subjected both the Benedictine Constitution, and the declaration of February 8, 1745, to a closer inspection, he thought to find in its wording and purpose reasons calculated to justify the opposite view. The learned Pope, who carefully weighed his words, spoke of *sacrilegious priests, Sacrilegi quidam qui complicem in peccato turpi absolvere audeant,* and therefore he manifestly had in view only those who not before but after Holy Orders, as persons consecrated to God, sinned, be-

cause those who transgress *contra sextum* before ordination commit not a qualified sacrilegious sin, though of course a grievous sin against chastity, and therefore they cannot be designated *sacrilegi.* Though it is no doubt true that through Holy Orders the bond of complicity is not dissolved, and that the Pope in his constitution did not expressly distinguish between *peccata post* and *peccata ante sacerdotium commissa,* and thus appears to have reserved the one as well as the other, still it is also true, because by the use of the word *Sacrilegi* tacitly (*implicite*) expressed, that the Pope did not aim at the simple, but at the sacrilegious complicity, at the sin committed sacrilegiously after reception of Holy Orders, and intended to withdraw power of absolution from the sacrilegious priest. This view is supported by the consideration that between a simple and sacrilegious sin of this kind there is considerable difference and the former is in culpability far surpassed by the latter. It would be unfair if, notwithstanding the vast difference, one sin should be punished in the same degree as the other. It may then be assumed, with good reason that the Pope wished to withdraw the sacrilegious rather than a simple complicity *peccato turpi* from the faculty of the concerned priest.

This milder view receives important support also from the aim of this constitution. The learned Pope issued it, partly to preserve the holy tribunal of Penance from desecration, and partly in order to protect the priest and souls confided to his care against temptation. *Magnopere cupientes a sacerdotalis judicii et sacri tribunalis sanctitate omnem turpitudinis occasionem et sacramentorum contemptum et Ecclesiae injuriam longe submovere et tam exitiosa hujusmodi mala prorsus eliminare, et quantum in Domino possumus, animarum periculis occurrere.*

The holy Sacrament of Penance would, no doubt, be exposed to

the greatest danger of desecration: it might even become the direct cause of downfall, if priests in such cases could absolve their partner in sin. This peril is either not at all or only remotely present if a confessor absolves a person from a sin *contra sextum* which he had committed with her before ordination, especially if, as is to be assumed, he has done sincere penance before entering the priestly state. Thus the basis and aim of the law, and therewith the law itself, passes out of the case, and he may validly absolve the *complex peccati* of this particular sin.

In the case cited by Gury, Liborius could therefore validly absolve Flavia: (1) because he was not *complex sacrilegus;* (2) because for him and Flavia a danger for the repetition of the sin did either not at all, or only remotely, exist; and (3) because, moreover, in this case the principle *odia restringi convenit* demands recognition.

Nevertheless, it hardly needs special mention that, for reasons of delicacy and propriety, it would be at least unbecoming for a person to go to Confession to a priest who, in his earlier years and in the lay state, had failed with her.

B. Schmid, O.S.B.

LVII. ENVY AS MORTAL SIN

St. Thomas shows (2. 2. *q.* 36. *a.* 4.) not only the character of envy as capital sin, but also how the *filiae invidiae: susurratio, detractio, exultatio in adversis proximi, afflictio in prosperis proximi, odium,* develop therefrom. Furthermore, he refutes the objection against classification of this sin as capital sin, as also the objection that the above-mentioned *exultatio* and *afflictio* coincide with envy; respecting the *exultatio,* he denies it entirely; respecting the *afflictio,* he admits it under one point of view, while under another he denies it. This may suffice as regards envy as capital sin.

Our task here is to ascertain whether envy is *ex genere suo peccatum mortale,* and if so, whether *ex toto genere.*

The answer to the first question is simple, if the nature of envy is precisely determined. Not infrequently penitents lack this knowledge, and they accuse themselves of envy, although they did either not sin at all, or sinned (grievously or lightly), but not through envy. There are acts which have one or two characteristics in common with envy. One characteristic, the *tristitia de bono proximi* has, in common with envy, the so-called *aemulatio,* or *zelus,* when someone is sad at his neighbor's possession, because he, too, would like to possess, not *in eodem individuo,* but *in eadem specie vel mensura.* If the *aemulatio* has reference to natural or supernatural mental qualities, it is quite praiseworthy; if to temporal advantages, it is also of itself laudable, or at least permissible, but it becomes sinful if the desire is in any way inordinate; nevertheless, it has not even in this case the character of envy. For this there would be required the desire that the neighbor might not possess the benefit. Even this

wish is not the *nota specifica* of envy. Such desire is present also in other kinds of *tristitia be bono proximi.* For instance, in the *tristitia,* which is a result of fear, if someone, for instance, mourns over a neighbor's possession because he fears, either for himself or for others, evil consequences from it, be they deserved or undeserved. In the former case the *tristitia* is faulty, not so in the latter, though the fear which produces it may be inordinate, for instance, if there is no sufficient reason for suspecting that the neighbor will misuse his power in order to harm us or others. In no case has this *tristitia* the character of envy. Again, the desire that the neighbor might not obtain, or not possess, something of value is connected with that *tristitia* which someone entertains because he considers the neighbor unworthy of the benefit in question. This *tristitia* is called *indignatio,* or *nemesis.* In regard the *bona honesta, ex quibus aliquis justus efficitur,* so St. Thomas teaches (*l. c. a.* 2.), this *tristitia* cannot occur at all; for the *gratia justificationis* is not obtained except by proper preparation, if otherwise such preparation is possible (*comp. Conc. Trid. sess.* 6. *de justif. cap.* 5.). It is only possible *de divitiis et de* (*aliis*) *talibus, quae possunt provenire dignis et indignis* (*S. Thom. l. c.*), and is sinful if directed against Divine Providence, which allows the unworthy to have such goods either *ad eorum correctionem,* in order to incite them to penance and conversion, or *ad eorum damnationem,* that, if they do not become converted and thus incur damnation, they will be rewarded then for the good that they have done. It is sinful also if it proceeds from a contempt of the eternal goods which God has reserved for his faithful (*ps.* 36. 1.). But neither in the one nor in the other case has it the character of envy.

Finally, the desire that the neighbor may not obtain, or possess, a benefit, is present in the *tristitia,* which is sad at the neighbor's

possession, *in quantum proximo bonum est,* and this *tristitia* is *odium inimicitiae,* just like the *gaudium* and *desiderium circa malum proximi ut ipsi malum est,* it results from envy (*S. Thom. l. c.* 8, *q.* 34. *a.* 6.), is nearest related to it, yet not envy itself.

Although the envious does not grieve over a possession of the neighbor, because it is an advantage for the latter, still envy is directly *contra caritatum* (*proximi*), *cujus est gaudere de bono proximi,* because the envious only grieves over the neighbor's possession and would like to see him deprived of it, *quod sit diminutivem propriae excellentiae.* The *diminutio propriae excellentia per bonum proximi* is in itself never a just reason to grieve over the possession of the neighbor and to wish that he might not have the same, unless he makes use of it *ad diminuendam excellentiam nostram,* or if he is unworthy to possess it in common with other more worthy persons, or even in preference to them. (Compare what is said above of *tristitia ex timore* and the *indignatio.*) Then again it is quite false that the *bonum proximi,* except in the cases just mentioned, is a *diminutio propriae excellentiae, cum ex proximi felicitate tibi propter caritatis et amicitiae unionem potius aliquid excellentiae accedat,* as Laymann (1. 2. *ti.* 3. *c.* 10. *n.* 2) correctly remarks. For this reason we said *quod sit,* and not *quod est, diminutionum,* etc. Is envy thus directly *contra caritatem proximi,* it is evident that it is *ex genere suo peccatum mortale* (*comp. S. Thom. l. c. q.* 36. *a.* 3.).

The second question is whether it is *mortale ex toto genere.* St. Thomas says nothing about this, because he makes, in general, no distinction between *mortale ex toto genere* and *non ex toto.* Many other authors explicitly declare that there is not respecting this sin a *parvitas materiae,* but do not explain this further. Of all authors to whom we have turned for advice, we find Schwane (*Special*

Moral Theology, I. p. 140) most explicit, in spite of his brevity: "Envy is a grievous sin if our fellow-beings are envied on account of their spiritual advantage. Envy that concerns temporal possessions of our fellow men is not always a grievous sin."

Leaving aside this distinction between spiritual and temporal benefits, we say: Envy is always a grievous sin if the object is a possession of such nature, or such extent, that the neighbor, by its absence or deprivation, would suffer an important injury.

Dr. Anton Auer.

LVIII. A QUESTION OF RESPONSIBILITY

By G. Murray, C.SS.R.

Case. A confessor has two penitents who cause him a great deal of perplexity. The first, who is frequently guilty of serious breaches of the moral law, strives to excuse himself on the ground that force of habit leads him on. This habit he attributes in great part to heredity, reinforced by evil companionship.

The second, suffering from some nervous derangement, has apparently worked himself into the conviction that a certain kind of temptation is irresistible. His lapses do not cause him any serious worry. In fact he takes them as a matter of course. He is confirmed in his view by his physician, who assures him that his nervous condition, not his will, is answerable for his failings.

Questions. 1. How do heredity, temperament and habits affect responsibility?

2. Are pathological states destructive of free will?

3. Should the confessor take account of these states?

4. What of the two penitents?

Solution. 1. Heredity, temperament, character, habit as well as environment and education—in fact, all the elements within man's nature or the agencies from without that color his thoughts and play upon his will are helps or hindrances in his conduct of life. Heredity is admitted by all. The extent of its influence is a question of dispute. That temperament, character and habit make it more difficult, naturally speaking, for one individual than for another to overcome certain forms of temptation cannot be denied. The same must be said of education and environment. All these causes affect

a normal man and leave him normal in spite of their action. Their influence upon responsibility may be summed up in two statements: (1) As a rule, in important matters, they do not deprive a man of that degree of deliberation necessary to commit a mortal sin. (2) As a rule, they lessen a man's accountability, short of excusing him from serious guilt. There is a vast difference, too often forgotten by modern psychologists, between a cause that determines, necessitates, compels assent of the will to a line of action and a cause that merely influences it. If this distinction were borne in mind there would be a less marked tendency to excuse every excess and palliate every crime. At the same time, there would be deep and reasonable pity for human frailty.

2. Pathological states, or diseases of the will as they are sometimes called, are to a great extent the result of nervous trouble. The nervous system at times appears to be in a state of depression or collapse, at others to be roused to the highest pitch of excitement and exaltation. Occasionally the will itself seems incapable of energetic action, it loses control of the other faculties and weakly gives in to their demands, without even a show of resistance. On the other hand, it not infrequently occurs that an irresistible impulse carries it away. Now a pathological state is something abnormal, exceptional. It is not presumed to exist in an individual unless there are clear signs of its presence. A penitent who attempts to excuse his lapses on the plea of unconquerable impulse, for example, is not to be taken at his word, unless it becomes manifest that he is speaking the truth. As it is possible for a man, in a great many instances, by an energetic exercise of will-power and determination to return to a normal condition, it must be taken for granted, at first, unless there is unmistakable evidence to the contrary, that the temptation can be overcome. As far as a definite norm can be

formulated in this difficult matter, we may say that usually man remains master of his moral conduct, even when under the influence of those diseases of the will, although the exceptions here are much more frequent than when there is question of habit, environment or some such agency.

3. The confessor must take account of everything that increases or lessens responsibility, in order to form an accurate idea of the guilt of his penitents. As nervous troubles are more prevalent now than in former times, the study of them cannot be entirely neglected. Otherwise, the priest is liable to judge too severely, as he would a normal penitent, or too leniently, as he would an entirely irresponsible one, those who come to his tribunal for pardon and advice. His assumption that a man can usually do, at least ultimately, what he has set his mind and heart on, will lead him to encourage all and urge them to energetic and persistent action. In that way the despondent will come to renew their efforts at self-control and those who have complacently accepted their weakness as unconquerable will be roused from their dangerous sense of security.

4. The first penitent is a slave to habit. If the habit was deliberately acquired and never combated, if it is knowingly fostered, if no serious effort is made to eradicate it, then it is voluntary. The acts, vaguely foreseen, that issue from it are voluntary too. For them a man is responsible, even though he is not actually conscious of wrong-doing in each individual instance. If his plea that his will is overborne by habit is to be valid, so as to excuse him from serious sin, or at least to diminish his guilt, he must sincerely take effective means to rid himself of the cause of his failings,—his habit.

The second penitent is more difficult to handle. While every natural means is being taken to build him up physically and to cure him of his bodily trouble, while the help of God is being enlisted

by prayer and the reception of the Sacraments, an assault must be made on his mental attitude. As long as he thinks resistance useless, he will not resist. He must be brought around to the conviction that he can and must overcome temptation. This new realization of power and obligation will be an incentive to courageous and persevering effort. It will awaken the will from its lethargy. The confessor will commend and encourage all attempts to conquer evil, no matter how unsuccessful they may be. He will hold out to the penitent the sure hope of ultimate triumph. God helping, the will generously striving, results must follow. Until they do, the confessor must be patient and ready to make allowances. Frequently during the period of struggle, he will have to leave the appraisal of guilt to God's inscrutable wisdom. Occasionally perhaps he will have to admit that the yielding to temptation is a disease rather than a sin. More often than not, in the long run, he will have the comforting assurance that he has brought a soul, sick unto death, back to Christ.

LIX. FAVORING POOR RELATIVES IN THE DISPOSITION OF RESTITUTION MONEY

Julian owes his friend Xavier for the last ten years the amount of forty dollars, as a share from the proceeds of a successful speculation in which both had joined. He had lost all trace of his friend before the profit was realized, and as he has now no reasonable prospect of ever ascertaining Xavier's whereabouts, he hands the amount to his confessor with the request to employ it for charitable purposes. The priest takes the amount and gives of it (without the knowledge of Julian or any one else) fifteen dollars to a needy brother of his, and the other twenty-five dollars to his parents, who, although not in want, still on account of advanced age require special care, and on that account are in need of support. This support the priest otherwise provides out of his own income; upon this occasion, however, he employs these twenty-five dollars for the same purpose *parcendo suis rebus.* The questions are: 1. May Julian devote the forty dollars for charitable purposes; and 2. may his confessor employ the money in the way stated above?

Answer to the first question: That Julian could apply the money in this way is the opinion of Sayrus, who writes: *Quando dominus incertus est* (this was Xavier in the sense of the following words) *et nescitur, ubi habitat, . . . danda res est pauperibus, quando verisimile est, dominum non compariturum.* (*Clavis regia lib.* 10. *tract.* 5. *cap.* 2. *n.* 24.) That he even did more than was required appears from Friedhoff's opinion that: If the possessor is unknown, or though known, is directly or indirectly beyond reach, and the holder is a possessor in good conscience, he may (in the opinion of Sayrus

and of others *etiam si dives esset*) retain the matter as his property; if a possessor in bad conscience he must make restitution for charitable purpose. (*Special Moral Theology*, § 138 *n.* 4; comp. also *Sayrus l. c. n.* 28 *and* 21.)

Answer to the second question: If the priest was well-to-do, or perhaps even wealthy, it was not praiseworthy for him to prefer his own relations to other persons in needy circumstances just to save his own money. If he, however, was not blessed with any considerable superfluity, then I do not see (unless scandal was given) why it should be improper for him to prefer his brother and parents, as long as they were needy: *notandum, sub nomine pauperum comprehendi etiam conjunctos, si vere ipsi egentes ita sint, ut juxta status sui conditionem vivere nequenat.* (*Liguori, Homo Apostol tract.* 13. *n.* 48.) If the priest was convinced of the need of these relatives, he cannot be obliged to make restitution, even if he be wealthy. If in doubt about their need, he should have sought the advice of his confessor, or of other proper authority. Agreeing with this view, and in further discussion of this subject, Sayrus writes: *Si necessitas et inopia sua sit certa, potest sibi aut cognatis tamquam vere pauperibus illa* (*bona*) *elargiri, dummodo id faciat sine fraude et dolo. Quia, quum jure expressum sit, dari debere pauperibus, non autem his vel illis, consequenter potest sine consilio alicujus ea sibi restituere. Et confirmatur: quia, si aliquis alius deberet restituere, esset pium dare huic, qui nunc retinet; ergo ipse poterit sibi retinere. Quando autem necessitas non est ita certa, ne quis sinat se proprio affectu et judicio in causa propria decipi, monent praefati autores* (here are eleven of them enumerated, at their head Sts. Thomas and Cajetan) *quod non retineat ea sibit aut ea suis amicis et parentibus distribuat sine autoritate Parochiani aut prudentis confessarii, maxime si quantitas sit magna* (in our case the same is not large).

Ubit autem semel sibi aut suis consanguineis praedicta autoritate et consilio distribuerit, non tenetur amplius ad restitutionem, etiamsi postea ad pinguiorem fortunam venerit. (*Ubi supra n.* 21, *cfr. etiam Aertnys, Theol. moral. I. lib.* 3. *tract.* 7. *n.* 266.)

What is to be done if, after the money has thus been disposed of, Xavier should unexpectedly reappear, or in some way become accessible? St. Alphonsus instructs us in this matter in the following words: *Quando, spectatis omnibus circumstantiis, non est* (*i. e., non censetur,* as in our case) *amplius possibile, quod dominus inveniatur, tunc pauper acquirit rei absolutum dominium, sine ullo onere restitutionis* (*si dominus postea casu appareat*). (*Tom.* 3. *n.* 590.)

BERNARD DEPPE.

LX. SOME REMARKS ABOUT THE PORTABLE ALTAR AND ITS DESECRATION

It happens not infrequently that portable altars, or altar-stones, upon which the Sacrifice of the New Law is offered to God, are not found in the condition which the precepts of the Church require, and it will therefore be of benefit and advantage to present here briefly the ecclesiastical rules regarding construction and the possible execration of portable altars.

A portable, or movable altar (*altare portatile, mobile,* also *altare viaticum*), is, as well known, a square stone with a smooth surface, blessed by the bishop with the special rite prescribed by the Church, which, if required, may be transferred from one to another altar, or another place allowed by the Church for the celebration of holy Mass. This stone, so that it may not be easily injured, is usually of marble (cement slabs are allowable, but not slabs of plaster or pumice-stone, S. R. C., April 29, 1887). For this reason the oldest ecclesiastical law books provide: *Altaria, si non fuerint lapidea, chrismatis unctione non consecrentur, Dist. I. c. XXXI. de Consecr.;* it must be of size sufficiently large that at holy Mass chalice and paten, at least for their larger part, may be placed upon it; it must at the same time be of depth allowing the *sepulchrum* (*confessio*) to be cut into it.

The *sepulchrum* is, according to recent practise, a receptacle hewn out at the upper surface of the altar-stone in the form of a small square, in which, at the consecration of the altar-stone, relics of saints, together with their authentication, are deposited by the bishop, whereupon the *sepulchrum* is covered with a tightly closing piece of

stone, called the *operculum* (also *sigillum altaris*), which is well cemented to lock the sepulchre tightly and securely.

As the Canon Law ordains *in altare non consecrato non licet celebrare missae,* and since it often becomes necessary to remove the altar-stone from the altar-table (*mensa*), and transfer it to another altar, care should be taken in so inserting the altar-stone in the altar-table that it can be easily taken out. For this reason, the altar-stone should not be masoned into the table, nor fastened with cement, because this would cause difficulty in removing it—might even cause the desecration of the altar-stone. Moreover, the altar-stone should be raised a little above the level of the altar-table so as to make its location easily discernible for placing chalice and paten upon the same.

The altar being the most important and essential part of the Church, because it represents mystically that exalted altar upon which the High Priest of the New Law offered Himself to His heavenly Father for the sins and the salvation of mankind, and because this sacred Sacrifice is in an unbloody manner daily repeated in the Catholic Church, special care should be taken so that the erection of altars in churches and chapels strictly corresponds to liturgical precept. Since the altar-stone, with its relics of saints, forms the most essential part of the altar it is necessary that the priest from time to time, especially if the church be damp, examine whether the altar-stone has not become injured, or even desecrated.

In order that this inspection of the altar-stone, to be undertaken not only occasionally by the pastor, but also on occasion of canonical visitations, may be done properly and satisfactorily, we will here state the chief things to be considered in determining the desecration of portable altars. Desecration is to be considered as established:

1. If the piece of stone (*operculum, sigillum altaris*), which closes the *sepulchrum,* has in any way, or for any cause, been removed, and if in consequence the *sepulchrum* has been opened. (S. R. C., September 23, 1848; and August 12, 1858.)

2. If this locking-stone of the *sepulchrum,* through some mischance, has been broken or cracked, and thus the *sepulchrum* has been opened. (S. R. C., September 23, 1848.)

3. If this stone locking the *sepulchrum* is still there, but has become loose, making it doubtful whether the *sepulchrum* has not been opened. If it can be ascertained that an opening of the *sepulchrum* has not taken place, that merely the fastenings of the cover gave way in the course of time, or that the loosening of the cement was caused by careless handling of the altar-stone, then the altar does not lose its consecration, and any priest may undertake the recementing, but the *sepulchrum* must not be opened in the process, because otherwise desecration would take place. (S. R. C., March 14, 1861; September 25, 1875.)

4. A portable altar must be positively regarded as desecrated, and in all such cases be reconsecrated, if the *sepulchrum* is broken open and the relics removed, even if other authenticated relics are substituted (S. R. C., May 23, 1835; December 7, 1844, and May 23, 1846). (If the episcopal seal is broken or destroyed, the altar is not thereby desecrated of itself. S. R. C., March 11, 1837), provided neither the *sepulchrum* is broken open nor its cover injured.

5. A portable altar is to be considered as desecrated if the *sepulchrum* is shattered. (S. R. C., September 23, 1848, and August 12, 1858.)

6. If such a considerable portion of the altar-stone has broken off that the remaining portion will no longer suffice to hold chalice and paten. (S. R. C., March 3, 1821.)

7. If, in consequence of injury to the altar-stone, one of the parts that have been anointed has disappeared, which may easily happen to corners of altar-stones. (S. R. C., October 6, 1837.)

8. If the stone is so completely cracked in two that it can no longer be considered as a whole, even though the break cannot well be noticed. (S. R. C., August 31, 1867; March 3, 1821.)

On the other hand, an altar-stone does not lose consecration: (a) When merely a small portion of the same, for instance, of a corner, is broken off, or has in course of time crumbled away.

(b) If the wooden frame or back of an altar-stone is separated from it.

(c) If an altar-stone is lifted from its cavity in the altar-table and transferred to another altar, provided the *sepulchrum* is not broken open in this process, nor the relics lost. (S. R. C., June 21, 1710; and December 7, 1844.)

The principles just stated are to be remembered whenever doubt arises as to whether an altar is desecrated or not. Since the *sepulchrum* with its relics forms the most important part of the portable altar or altar-stone, and as it is evident from what has been said that it can be very easily injured, it is incumbent upon pastors not to neglect the altar-stones of their churches, and to make sure frequently that they are not desecrated and that the *sepulchrum* is not injured. This is especially necessary if church or altar are damp, or if the sexton and his assistants are careless, as unfortunately happens often, in cleaning and decorating the altar. Their attention should be drawn to the fact that the altar-stone must be protected by every precaution.

The Code in Canon 1200 states that with the pollution of a church neither the immovable nor the portable altars lose their consecration. Formerly the immovable altars became execrated by the pollu-

tion of a church. Another benign change of the law affecting altars is that the altars, both immovable and portable, are not execrated by a slight crack of the cover of the *sepulchrum* and any priest may fill the crack with cement (Canon 1200).

Dr. Ant. Brychta.

LXI. ERRORS IN CHANGING MONEY

Flavia, a servant, is in the habit of buying supplies in the store of Emporius. One day she hands to Emporius, who has waited upon her personally, a ten-dollar bill to be changed; he gives her three dollars too much, which fact Flavia only notices on arriving home, when she counts her money. She returns immediately to the store and informs Emporius: "In making change you have made a mistake of three dollars." The store-keeper, in the belief that Flavia meant that he had not given her enough change, and that she would ask for the difference, replied brusquely: "Such things do not happen here; and, what is more, you cannot prove your assertion." Flavia tries to explain, but Emporius proceeds with waiting on other customers and pays no further attention to her beyond dismissing her with the words: "It is my rule not to consider such claims unless made during the transaction; if there was anything wrong you should have mentioned it when I gave you the change." Whereupon he went about his business. Flavia, angered by this treatment, left the store and made up her mind to keep the money for herself. Upon another occasion Flavia bought supplies in another store, where she was not a regular customer. There she was not waited on by the proprietor, but by the clerk. It so happened that he, too, made an error in making change and gave her fifty cents too much. Later on Flavia noticed the error, but she reasoned that she would not be well received if attempting to tell the clerk of his mistake; and she supposed the same principle would hold good here as in Emporius's store. Thus she soothed her conscience and kept the

money for herself without mentioning the matter. The questions are asked: 1. May Flavia, in the first case, keep the money with good conscience? 2. What is to be said about Flavia's proceeding in the second case?

Answering the first question: Flavia may in this case keep the money for herself, not because Emporius refused to listen, for she would have had occasion to bring the matter up some other time. The actual reason why Flavia is not obliged to take further steps, and why she may retain the money with good conscience, is found in the circumstance that Emporius stated that in his store prevailed the rule not to consider such claims unless made during the transaction. For, if he applies this rule in his own favor, justice requires that he let it prevail also in cases where he might sustain a loss; it would be manifestly an injustice if he demanded restitution in such cases without being willing to make restitution. This applies all the more in our case as Flavia regularly made her purchases at this place and it might easily happen now and again that a mistake happened to her disadvantage. In such cases Flavia would have no hope of indemnification if Emporius's principle had only a one-sided application; if applied mutually, matters would adjust themselves. It is, of course, understood that a principle of this kind cannot apply if the error is immediately noticed and can easily be proved.

Answer to the second question: This case is, in several respects, different from the preceding one. 1. Flavia does not know at all whether this other store-keeper in such cases acts on the same principle as Emporius. 2. As Flavia does not otherwise trade at this store, there is no opportunity that, by an occasional mistake to her disadvantage, the matter might right itself; there would be no reciprocity. 3. In this case it is a question not of the proprietor, but

of a clerk, who may perhaps have to make good the deficit out of his own pocket. Therefore Flavia did wrong by keeping the money for herself, and she is obliged to report the error that took place and return the excess change received. In order not to cause trouble to the clerk, she should, if possible, return it to him privately.

Dr. J. Niglutsch.

LXII. THROWING SUSPICION ON SOME ONE ELSE

Colius has, in a fit of jealousy, murdered a young man, and in order to divert suspicion from himself, has left in the neighborhood of the corpse the hat and knife of his friend Florus, who had been living in enmity with the murdered man. The police discovered these articles and arrested Florus. The latter is finally found guilty and sentenced to death. Then Colius, in troubled conscience, hastens to his confessor, Father Clemens, who absolves him without hesitation, with the remark that no one is obliged to accuse himself. With little faith in this explanation Colius turned to another confessor, Father Severus. This priest refused absolution until Colius would, even with danger to his own life, free by self-accusation the innocent Florus from his unfortunate position. Colius is now perplexed. Which confessor must be obeyed, and why?

1. In the case of Colius there are present all conditions that establish the strict obligation of restitution. He is guilty of having caused the misfortune of Florus. The remarks of the first confessor that no one is obliged to accuse himself is, in this sense, and especially in application to this case, palpably incorrect. If there is merely question of one's own punishment, then it is true that no one is obliged to accuse himself. If, on the contrary, self-accusation is the necessary and only adequate means to make good a wrong committed, such as in our case, then it may become a strict obligation.

2. With far more apparent justification it might be said that Colius, by depositing hat and knife of his friend, became merely the occasion (*occasio*), but not actually the cause (*causa efficiens*) of the latter's conviction. Lehmkuhl says (*Theol. mor. I.* 997): *Si*

quis positiva fraude in alterum suspicionem (criminis) convertit, videndum est, num illa fraus prudenter movere potuerit, ut alterum pro reo haberent et punirent. Quod si factum est, excitatio suspicionis fuit causa damni efficax: si alii vero temere alterum condemnarunt, solam occasionem damni habemus. Then he cites the case of a thief who throws some of the stolen coins before the door of another, who finds the same, takes them, and in the subsequent investigation is held and punished as the thief. In this case, the author explains, the real thief's action is merely the *occasio,* not the *causa efficiens* of the resulting conviction. And rightly so, for although I may possess coins that another has stolen, there is no sufficient reason to hold me as the thief. I may have obtained possession of these coins in a perfectly innocent way. How, then, about Colius's action? He left hat and knife of Florus beside the murdered man. Was the presence of these articles near the corpse sufficient reason for considering Florus to be the perpetrator, and to condemn him to death? One may doubt this. The possibility of the true state of facts will not be overlooked by a deliberate judge, because the trick of throwing suspicion upon others is not unusual with criminals, and Florus will certainly have stated that hat and knife had been stolen from him. If it is remembered that Florus had lived in enmity with the murdered man, the presence of these articles might well lead to a verdict of guilty against Florus, without justifying a charge of bias against jury or judge. Colius, while not responsible for the additional motive for suspicion, has nevertheless made use of it intentionally, to divert more surely suspicion from himself; he knew that because of this circumstance his act could more surely draw down upon Florus bad results. He who gives to a sick person a poison that would not kill a healthy person, is guilty of murder nevertheless, if he knew beforehand the fatal effects of the poison, and yet gave it.

Colius could and did know that by leaving hat and knife of a man who had lived at enmity with the murdered man he might easily bring about his conviction. Hence he is all the more the moral cause of it, and is obliged to avert the threatened danger from Florus, even though he must assume it himself. Colius was conscious of this heavy responsibility; for this reason he was not satisfied with the decision of the first confessor. For this reason also it will be relatively easy to induce him to the actual fulfilment of his duty. It is not necessary that Colius should give himself up and expose himself to punishment; it suffices if he declares the matter before competent, credible witnesses, and lets them take further action while he puts his own person in safety.

JACOB LINDEN, S.J.

LXIII. FEIGNING ABSOLUTION

The priest Sempronius has administered the last Sacraments to an insane man, dangerously ill, in his lucid moments. The patient subsequently becomes a raving maniac and incessantly and frantically calls for a priest to absolve him. Sempronius is called again and requested by relatives to pretend compliance with the lunatic's demand, *i. e.*, to put on his stole and act *as if giving absolution.* May Sempronius consent to this suggestion?

The answer can only be: No. Apart from the fact that positively and under no circumstances a *simulatio Sacramenti,* in the actual and serious sense, *qua ficte aliquid ponitur, quod essentialiter ad Sacramentum pertinet* may take place, for instance, pronouncing the words of absolution without intention to absolve, because such a *mendacium sacrilegum* is always a grievously sinful abuse of the holy Sacrament of Penance; the *simulatio absolutionis,* in the sense that the penitent, or bystander, or both, by the apparent performance of the judicial sentence, are deceived, while in reality only a blessing is imparted, is thoroughly unlawful. *Confessarius non debet intendere deceptionem (poenitentis vel) adstantium, sed tantum occultationem veritates; nam alias mendacii reatum non effugeret* (*St. Alphonsus l. c.*). Only in rare cases may the confessor conceal the truth by making the sign of the Cross and a prayer of blessing; he may conceal it to the penitent himself in a case where he must withhold absolution, on account of a certain sacrilegious concealment of a sin confessed by the complex of this penitent, in order to avoid material sacrilege and his own co-operation (St. Alphonsus speaks of this case, *VI. n.* 631); and before others, if the confessor cannot

absolve the penitent on account of indisposition and must conceal the refusal to prevent violation of the seal of Confession and defamation of the penitent. (See *S. Alphons. VI. n.* 59; *Lehmkuhl, II. n.* 45.)

In our case there is manifestly no reason for a justifiable *dissimulatio denegatae absolutionis,* it would be a *simulatio* intended purely *ad deceptionem aegroti,* by which the sacred Tribunal would be degraded to a farce or caricature, although for the good purpose of pacifying the patient.

What, then, may be done in our case? It would be advisable, first of all, to inquire if the desire of the insane man is not, indeed, more rational than that of his relatives, namely, if the sick man does not perhaps really need absolution, as it is possible that in lucid moments he realizes that his confession has been invalid, or he has committed another sin, and now, controlled by the impression, desires another Confession and absolution, hence his clamoring. If this suspicion can be verified, Sempronius must certainly again absolve the poor man in all earnestness, and unconditionally. But even if this supposition is not founded, or cannot be proved, Sempronius may also in all earnestness, but of course only conditionally, absolve the patient once more, and this he may even repeat at further visits. It is a matter here of one seriously ill, and as according to the doctrine of St. Alphonsus, it is not only permissible, but even advisable to grant absolution to such a one whether he be conscious or not, and after some time repeat it at least conditionally. In Appendix II. *De assistentia erga moribundos,* §5 *monita circa agonem et mortem,* to his work *Homo apostolicus, tom.* 4, the saintly writer says: *Dum infirmus adhuc sensibus viget, absolutionem pluries ei conferre post brevem reconciliationem juvabit, ut ita ille magis circa statum gratiae securus reddatur, si forsan praeteritae confessiones invalidae fuissent, aut saltem gratiae augmentum recipiat, necnon purgatorii poenae*

ei minuantur . . . Si tamen infirmus jam sensibus caret et nullum doloris nec absolutionis desiderii signum ostendit, non expedit, valde saepius intra eundem diem absolutionem ei impertiri; quia tunc, licet conditionate detur, tamen ut Sacramentum valeat administrari sub conditione, urgens et gravis causa requiritur; unde opus est, ut aliquod notabile temporis spatium intermediet. Verum in hoc sacerdos ex conscientia, quam noverit infirmi, se dirigere debet; nam si ille habituatus fuerit in pravis cogitationibus, si aliquo vulnere moritur, aut aliqua odii vel impuri amoris passione est irretitus, si infirmitas est nimis acerba, et ipse non libenti animo suffert, tunc saepius absolutio dari potest; sin autem, sufficit, ut trium aut quatuor horarum spatium intercedat: frequentius tamen, si jam moriturus est.

St. Alphonsus is correctly of the view that God in His infinite mercy incites the unconscious sick, struggling with death, in their lucid intervals, by giving them sufficient grace to make inward supernatural acts for salvation, and aids them, where necessary, as for the holy Sacrament of Penance, to manifest them also outwardly. Upon this presumption he bases the permissibility and advantage of repeating after appropriate intervals at least conditional absolution, it may in any case be repeated every three to four hours, and the nearer death the more frequently. Thus Sempronius should explain the matter to the relatives of the sick man, and tell them that though not able to entertain the suggestion of simulating the act, he will really give the patient the absolution. He will ascertain whether the patient has lucid moments, and use them for awakening acts of virtue, sentiments of contrition, and for the granting of unconditional absolution; or, if such lucid intervals are not perceptible he will, after announcing that he will pronounce absolution, recite aloud the acts mentioned before and give conditional absolution.

Dr. Joseph Eiselt.

LXIV. DISPENSATION FROM FASTING

In a lenten regulation is found the customary provision: "In special cases we hereby give the priests and confessors of our diocese the power to dispense individual persons for important reasons." In this same diocese Caius comes to Father Titius, to whom he usually goes to Confession, and requests for good reasons dispensation from fasting. Titius grants it. Then Caius, for similar reasons, asks also the dispensation of his wife, who is not a penitent of Titius. May Titius also dispense her?

Answer.—Yes. First of all the fact that the wife of Caius does not appear personally is no obstacle. There is no requirement that the dispensation must take place in the confessional, it may take place in writing, or by messenger, provided inquiries can be made as to whether sufficient grounds for the dispensation prevail. Thus the answer depends entirely upon the fact how the word *confessor* must be understood. If it is to be taken in the restricted meaning, *i. e.,* if the power is granted to confessors only for their own penitent, then, of course, Titius cannot dispense the wife. If, on the contrary, the expression has a wider meaning, for instance, that all who have jurisdiction to hear Confession, have also the jurisdiction to grant this dispensation, then Titius can dispense the wife: at least if he has jurisdiction to hear her Confession, in case, therefore, that she does not live outside his diocese. The latter view, it seems to us, should be held in preference. Of themselves both definitions of the term *confessor* have a perfectly reasonable meaning. Then, however, the rule governs: *Beneficia sunt amplianda.* It is true

that, as a rule, an individual dispensation must be strictly interpreted; not, however, the faculty to dispense. This is regarded as a beneficium, and hence the principle *Beneficia sunt amplianda* applies.

LXV. COMPENSATIO OCCULTA AND RESTRICTIO MENTALIS

Tullius, a wealthy but parsimonious widower, makes promise to his servant girl Claudia to marry her within a year's time, which promise Claudia accepts with pleasure and returns on her part. In the meantime another advantageous offer of marriage is made to her by another party, which she refuses in view of her expected marriage to Tullius. Subsequently, Claudia learns that Tullius is about to marry another person who possesses a considerable fortune. To Claudia's inquiries Tullius answers that he indeed has this intention, and he disputes that he ever made Claudia an actual promise of marriage, nor will he agree to any compensation. Claudia, realizing that further representations will be useless, and unable to produce legal proof that a betrothal exists between her and Tullius, tries to think of a means of getting indemnity some way or another. An opportunity soon presents itself. One day as Tullius returned home with a well-filled pocketbook he dropped it unawares while ascending the stairs. Claudia observed it, picked up the pocketbook secretly, and took the money contained therein, amounting to about $600, to a place of safety. Claudia believed she was doing no wrong, but was acting only in self-protection. When Tullius missed the pocketbook, his suspicions fell immediately upon Claudia; thinking that she had taken the pocketbook either out of his coat or from his desk. He accused her of the theft and had her arrested and examined. She asserts that she neither *wrongfully appropriated nor stole* anything from her employer. This deposition she confirms finally by oath, whereupon, for lack of evidence, she is set free.

Questions.—(1) Has Claudia a justifiable claim for compensation? Is Tullius obliged to make restitution to her? (2) If this is affirmed, the question is: May Claudia satisfy her claim by secret compensation? (3) As regards manner and means of Claudia's act to compensate herself, are they lawful and permissible? (4) Was Claudia permitted to swear to her deposition or did she thereby commit perjury?

To the first question: Claudia has a double right to demand restitution : (a) Because Tullius unlawfully withdrew from the betrothal; (b) because he was the cause of Claudia's refusal of an offer of marriage made by another. About the sum to be given in restitution Lehmkuhl observes: *Qui injuste a sponsalibus recedit . . . adigitur ad justam damni compensationem quae . . . communiter secundum convenientem puellae dotationem aestimari solet.* Therefore, in our case the sum of $600 cannot be considered too much. And even in the case that the betrothal had for some reason been technically invalid, Tullius would still be obliged to make restitution, because Claudia, on account of his promise of marriage, rejected another advantageous offer, and thus through his fault suffered great loss. There can be no doubt, therefore, about Claudia's right to compensation.

Answering the second question: Secret compensation (*compensatio occulta*) is allowed in the presumption: (a) that the claim is without all doubt certain; (b) that it is impossible, or at least difficult, to attain one's right by ordinary and legal means. That the first presumption is true in our case is clear from the answer given above to the first question. That the other condition prevails is evident from the statement of the case. Hence, Claudia is justified to resort to secret compensation in order to satisfy her just claim.

To the third question: When once the lawful claim is established,

then the manner of compensating oneself is immaterial, any manner is permissible, provided (a) that neither the debtor nor a third party suffers unjust injury; (b) that those who compensate themselves in this way must not thereby inflict upon themselves a relatively greater injury, or place themselves in imminent danger of losing a greater good. Regarding the first point it cannot be seen how in our case a third party might suffer loss. Not even Tullius is unjustly injured. This would be the case only then if he afterward repented and voluntarily made restitution to Claudia, which, however, is evidently improbable. And should he do so, Claudia would be in a position to refuse the proffered compensation wholly or in part. The first-named presumption is true, therefore, in our case, and on that account Claudia's procedure is not unlawful. It is different with the second presumption. The way and means by which Claudia helps herself to her rights are at all events very dangerous for her. She puts herself in danger of losing freedom and honor before the world. If her act had been proven against her she would have been branded as a thief and perjurer. Proper self-love does not permit that, on account of a lesser good (in our case, the money), one should expose oneself to the danger of losing a higher good, honor and liberty. Nevertheless, even though Claudia's action, because of the danger incurred, may be considered unallowable, still she may *post factum* retain the money obtained in this way as compensation for the wrong suffered.

To the fourth question: Claudia, in her deposition to the Court, was not guilty of an actual lie, as indeed she neither stole nor wrongfully appropriated anything. She made use of an equivocal expression, the so-called perceptible mental reservation. This mental reservation in the wider and unreal sense (*late seu improprie mentalis*) is, according to the universal opinion of theologians,

permissible when sufficient cause is present (*Gury, Theolog. moral. I., n.* 442, *edit.* 4; *Ratisbon, p.* 199). And Claudia could swear to her deposition with good conscience. In regard to this the rule is: Whatever one can state without lying or sinning, one may, for a good reason, also confirm by oath (*S. Alph. Liguori, Theolog. mor.* I., *III., n.* 151, *et* 152). That Claudia had important reason for her action is apparent: not only honor and good name, but even her liberty were at a stake. Hence, it is evident the Claudia committed no perjury, but only a permissible act of self-defense.

Dr. Joseph Niglutsch.

LXVI. INCORRECT DEFINITION OF VOW

Father Sempronius, in his religious instruction, while explaining the second commandment and speaking of the vow, finds in his handbook the definition, "A vow is a well-considered promise, made to God, to do a certain good to which one is not obliged by a commandment." Father Sempronius considers this incorrect, he omits the words: to which one is not obliged by the commandment, and substitutes therefor, "if one does not thereby prevent something better." Was Father Sempronius right in his view that the words: to which one is not obliged by a commandment, contain an error, and what about the provision which Father Sempronius puts in their place?

St. Thomas treats of the question in *II., II. al de q.* 88, *Art. 2*: *Utrum votum semper debeat fieri de meliori bono,* and in his discussion makes inquiry about what may be the actual object of a vow. Starting from the fact that the vow is a voluntary promise he holds there can never be the object of a vow that *quod est absolute necessarium esse vel non esse.* It would be foolish, for instance, to make the vow to die at the end of one's natural life. St. Thomas then, in second place, mentions things, which, although not absolutely necessary, still are necessary in order to attain a certain end, and adds that such things *in quantum voluntarie fiunt* may be the object of a vow. Here belong those acts ordained, or forbidden, by a divine law: because their practise, or avoidance, is not necessary of their own account, but necessary in regard to eternal salvation. Though, therefore, according to St. Thomas, these things may form the object of a valid vow, there is, according to the same

theologian, in the real and strict sense only that a proper object of a vow which is not prescribed by law, but advised, as only the latter depends perfectly upon our free will. *Propriissime,* and in first place, the object of a vow is some advised act; in second place: something of obligation. This is in our case the doctrine of St. Thomas and it is shared by theologians almost without exception. A divergency between the teaching of St. Thomas and that of other theologians is only found therein that the angelic teacher makes distinction between the object in a narrow and wider sense of the word, whilst this distinction is explicitly made by hardly any other theologian.

Recent authorities are also of opinion that not only the advised act, but also one of obligation may be the object of a vow, as is evident from even a superficial perusal of their works. Lehmkuhl (*P. I., n.* 498), for instance, considers this view so self-evident that it requires no proof. For those who nevertheless would be tempted to doubt, he refers to the *votum castitatis* as approved by the Church, the matter of which is not only celibacy, etc., but also acts always and under all circumstances forbidden to all men.

To hold the view that whatever is of obligation cannot be the object of a vow, would be to deny that all such acts are included in the *votum castitatis,* and consequently their commission by a person who had made the *votum castitatis* would be no violation of the vow, although, of course, a sin against the Sixth Commandment. That this would contradict the general conception of the vow of chastity is obvious; it appears, indeed, improbable that those who do not share our view have considered the logical consequence of their theory. Like Lehmkuhl, so does Gury (*tom. I., n.* 324) answer our question, and bases his affirmative answer on the fact that it does not at all conflict if the obligation to perform, or to

omit, a certain act has different sources, and he continues: *deinde vero votum huiusmodi est de re bona in se, cum praecepta supponatur, et est de bono meliori, cum novum vinculum ad maiorem fidelitatem et devotionem in adimplenda lege conferre possit.* P. Ballerini agrees with this in his note to Gury's remark, and he adds: *Insuper actionibus ex huiusmodi voto positis nobilitas, quae ex virtute Religionis profluit, uberiorisque meriti ratio accedit.* Upon the same ground as Gury, Müller bases his view (*I., II.,* § 52), and he explains that it is more meritorious to do something: *ex voto, . . . quam idem facere sine voto. Qui enim vi voti agit, ex motivo religionis et proposito firmiori, magisque constanti operatur.* Schwane decides in the same sense, in his Moral Theology (*I.,* §65), and explains that such an act of obligation receives from the vow a new specific merit, and its omission an additional specific wrong which must be confessed as a breach of the vow.

It is, furthermore, certainly the *sententia communis theologorum* which affirms the validity of a vow not to commit a grievous sin. All authors who defend the validity of this vow must agree with our opinion, because the avoidance of grievous sin is surely something to which we are obliged. The question to what extent such a vow in respect to venial sins has validity is here without importance, for, if the validity of such a vow is disputed, it is done for another reason.

Father Sempronius, therefore, was perfectly right when he considered it an error that only something advisable, and not something of obligation, may be the object of a vow.

The provision, which Father Sempronius substituted in place of the omitted words, is superfluous in the definition of the vow, for Father Sempronius could simply have based his definition upon that of St. Thomas: *est promissio Deo facta,* by which the nature of the

vow, as Lehmkuhl also observes, is fully expressed. If Father Sempronius, however, wished to give expression to the idea of the *bonum melius* in the definition, then the words: whereby one does not prevent something better are well chosen, for the essential meaning of this provision is not that the object of the vow must be better than what is of obligation, but *ut non sit, as* Reiffenstuel (*Theol. mor. tom. I., tract. VI.*) puts it, *ex se impeditivum alterius operis excellentioris.*

J. VON GRIMMENSTEIN.

LXVII. GAMBLING WITH ANOTHER'S COUNTERFEIT MONEY, AND THE OBLIGATION OF RESTITUTION

From an Italian periodical we quote the following case. Simplicius is an inveterate gambler. One day, finding himself out of funds, he observes that his room-mate, Fulvius, puts away a fire-lire piece among his belongings, and Simplicius, thinking that he can replace the money before its owner will discover the peculation, takes this coin and soon invests it in a game of chance. He was favored by luck and won considerable money. His joy and good cheer is noted by Fulvius, who is soon made aware of all the facts, including the one that it was his money which enabled his friend to gamble. Fulvius thereupon claims the entire winnings because it was his money that produced them. Simplicius balked, and finally they agree that Fulvius should have part of the winnings, and, of course, the amount taken from him. After Fulvius had his share safely put away, he made to Simplicius the startling announcement that this coin had been a counterfeit and that he was surprised how Simplicius could pass it without trouble. It is asked, had Fulvius any right at all to the winnings? May he retain share of the winnings with good conscience? Finally, may Simplicius keep the winnings and is he under no obligation to the taker of the spurious coin?

Ad. I. Fulvius had no claim whatever upon the winnings which Simplicius made with this coin. It is true that the possessor *malae fidei,* which Simplicius is here, must be dealt with far more severely than the *possessor bonae fidei,* and the principle: *res clamat ad dominum,* and *res fructificat domino,* must be more rigorously applied. For instance, the *possessor bonae fidei* may become the rightful owner of the article and its natural fruits, which is impossible to the *possessor malae fidei* because the necessary condition, the *bona fides,* is

lacking in him. But in our case there are *functus industriales.* The winnings must manifestly be ascribed to the luck and *industria* of Simplicius. According to law even the *possessor malae fidei* may retain the *fructus industriales.*

Ad. II. While Fulvius was privileged to have Simplicius arraigned in court for stealing, he was not obliged to it, neither *ex caritate* nor *ex justitia;* he could renounce his right and allow himself to be bought off by Simplicius, who was concerned in preserving his good name, even if, as in our case, there was no intention of dragging the culprit to court.

Ad. III. Simplicius may keep the winnings, but must make restitution for the spurious coin to the man who accepted it as genuine. Gambling presumes an agreement to let chance determine the winner. It is in the nature of a commercial agreement, an *emptio certo pretio juris incerti.* The gambler buys for a certain sum the right to a gain that depends upon chance, upon the *alea.* For the nature of an agreement is required the *mutuus consensus,* in the commercial agreement the *mutuus consensus dandi resp. accipiendi certum pretium pro quadam merce.* This consensus was certainly present in our case. Simplicius undertakes to put up five lire, and the man who runs the game on his part agrees to pay if Simplicius wins, and his stake is the gain that may fall to Simplicius through the gamble. This agreement was not affected by the circumstance that the buyer of the chance paid with counterfeit money. For this reason, even if Simplicius had not won, he would nevertheless have been obliged to make good those five lire. Since luck favored him, he may take and keep the winnings. He is obliged, however, to restore the five lire, because the man who took the counterfeit coin is injured to that extent by Simplicius, even though the latter was not aware of causing this injury.

PROF. JOSEPH WEISS.

LXVIII. MAY MASS BE CELEBRATED, AND HOLY COMMUNION GIVEN, AT AN ALTAR UPON WHICH THE BLESSED SACRAMENT IS EXPOSED?

It happens frequently that at an altar upon which the Blessed Sacrament is exposed, Masses are said, and holy Communion is given. The question is whether this usage is in accordance with the precepts of the Church.

The question cannot be answered by a simple yes or no. The answer depends upon various circumstances.

1. It is a generally prevailing precept that at an altar upon which the Blessed Sacrament is exposed no Masses may be said without special papal indult, such as given for the Octave of Corpus Christi, except for the purpose of reposition. The *Ceremoniale Episcoporum* (*lib. I. cap.* 12 *n.* 1). contains about this: *Non congruum, sed maxime decens esset, ut in altari, ubi Ss. Sacramentum situm est, Missae non celebrarentur, quod antiquitus observatum fuisse videtur.* And Clement XI., in his famous instruction of January 21, 1705, subsequently confirmed by Innocent XIII., Benedict XIII. and Clement XII., respecting the celebration of the Forty Hours' devotion (§*XII.*), provides, as of precept, that upon the altar of Exposition only the solemn Masses at Exposition and Reposition, but no other Masses may be said. It is true, no doubt, that the regulation of the *Ceremoniale Epp.* is only directive, and the *Instructio Clementina* of precept only for Rome; but there are other special decrees of the *S. Rit. Congr.* by which those regulations are made the universally binding law. Thus this Congregation, under date of August 9, 1670, ordained: *Non licere celebrare Missas in altari, exposito in eodem Ss. Sacramento, stante praesertim, quod adsint alia*

altari, in quibus celebrari possint, and again, under date of June 13, 1671: *Non debet celebrari Missa in altari, ubi est expositum Ss. Sacramentum, nisi sit pro reponendo.* Gardellini, in his commentary upon the *Instructio Clementina,* writes: *Certa est igitur regula, quae generaliter prohibet Missas in altari, in quo expositum est Sacramentum. Siquidem duo decreta ut generalla habenda sunt, quamvis prodierint in casibus particularibus.*

The reason for this general law is plain: since Christ is present in the Blessed Sacrament, and exposed to the view and for the adoration of the faithful, it is at least superfluous to call Him, through consecration, once more from heaven down upon the same altar for the same purpose.

If, therefore, during exposition of the Blessed Sacrament, a Mass is to be said, it must be celebrated at an altar other than the altar of exposition. It should be remarked that even at another altar neither a low nor a high Mass *pro Requie* may be said, also that in private Masses to the orations prescribed by the rubrics the *Oratio de Ss. Sacramento* may be added, and that at the *Sanctus* and the *Elevatio* the striking of the bell must be omitted. Though these rules are explicit and definite, there is even here *nulla regula sine exceptione.* An exception is permissible by reason of necessity, and also by reason of ancient and established custom. A case of necessity, in which celebration of holy Mass is allowed before the exposed Blessed Sacrament, would be, for instance, if for important reasons holy Mass has to be said and there is no other altar in the church. This is evident from the provision of the decree of August 9, 1670, and it is expressly admitted by Gardellini in the words: *Stante praesertim quod adsint alia altaria, in quibus celebrari possit.*

In this latter case, when the *praeceptum audiendi sacrum* presses for fulfilment and another church is not in the neighborhood, the

offering of the holy Sacrifice would even then be permitted on the altar of exposition if the other altar is so situated that if Mass is celebrated there it will be necessary to turn the back towards the altar of exposition.

Besides necessity, there excuses from observance of the general rule also an ancient custom, difficult to change. *Consuetudo, quae vere sit immemorabilis, quaeque tolli nequeat sine populorum scandalo et offensione* (*Gardellini*). This exception received indirect approval by the decree of the S. R. Congr. of May 7, 1746. In Poland it frequently happened that while the Blessed Sacrament was exposed, there were at the same altar, in addition to the Mass of Exposition, other private Masses said. To the question *utrum in his Missis debeat fieri commemoratio de eodem Ss. Sacramento* the Congregation answered: *Poterit fieri commemoratio de Ss. Sacr. durante expositione.* By not expressing itself about the existing custom of saying Mass at the altar of exposition it tacitly let it be understood that it may be tolerated, according to the popular axiom: *qui tacet consentire videtur.*

Nevertheless, even if an *urgens necessitas* and a *consuetudo vere immemorabilis* allow of exceptions from the general rule, they do not abrogate the latter but rather serve to confirm it. *Exceptio firmat regulam. Casus particulares,* observes Gardellini, *universalem legem et regulam non destruunt, neque omnibus aeque casus particulares possunt aptari, ut aeque omnes ad legem universalem stricte sequendam non teneantur. Est enim haec regula adeo stricte accurateque servanda, ut nemini liceat ab ea declinare.* It is evident from what has been said that the celebration upon altars upon which the Blessed Sacrament is exposed must be regarded in general as an offense against ecclesiastical liturgical ordinances.

2. Just as impermissible as it is in general to celebrate at an altar

where the Blessed Sacrament is exposed it is also to administer holy Communion from the same, even then if, for some good reason, holy Mass has been said there. The poor Clares of Tarentum were by a foundation obliged to have on the three days of carnival the Blessed Sacrament exposed for adoration in their chapel. As they only had one altar, and in order not to be deprived of holy Mass on these days, they presented a petition to the Holy See that the *celebratio Missae* might be permitted upon the altar of exposition. The favor was granted, but with the expressed condition: *dummodo in Missa sacra Eucharistia non distribuatur* (November 12, 1831). If it is prohibited to distribute holy Communion during holy Mass from the altar of exposition, still less may it be distributed outside of holy Mass. The reason is obvious: the distribution of holy Communion from the altar of exposition would not merely disturb worshipers in their devotion, but the priest giving holy Communion would be guilty of irreverence by turning his back to the Blessed Sacrament. In order that the faithful during exposition may not be deprived of holy Communion, the holy Eucharist should be kept, in a *ciborium* or chalice, on a side altar and distributed from there. Innocent XI. ordains so in his decree of May 28, 1682: *Quod si sacra communio, eodem tempore, quo Ss. Sacramentum expositum est, administranda fuerit, id fiat in altari diverso sumendo Ss. Sacramentum ex ciborio, et finita Communione reponatur in tabernaculo, aut ita velo tegatur, ut conspici non possit.*

If in the church of exposition there is only one altar, must the distribution of holy Communion be omitted altogether, or may it in this case be done from the altar of exposition? The latter view is favored by a decree of the S. R. C. of September 26, 1868, as also by the fact that Masses are allowed at the altar of exposition in case of necessity or custom. In that case care should be taken that holy

Communion be distributed as much as possible to the side of the altar to avoid turning the back towards the Blessed Sacrament. It is plain that, after giving holy Communion, the blessing with the ciborium must not be given from the altar of exposition, nor from a side altar.

Hence it is always a gross offense against liturgical ordinances when, no doubt more from lack of information than from indifference, *coram exposito Ss. Sacramento,* except in cases of necessity, holy Communion is administered from the altar of exposition, and if even the blessing is given with the ciborium.

BERNARD SCHMID, O.S.B.

LXIX. WHEN IN HOLY MASS ARE THE WORDS *CALICEM SALUTARIS ACCIPIAM* TO BE SPOKEN?

Father A. informs his confrater B. that a careful study of the rubrics has convinced him that the words: *Calicem salutaris accipiam* must be spoken while the fragments are collected and wiped from the paten into the chalice. On the contrary, Father B. is of the opinion, also based on a study of the rubrics, that these words are to be spoken *after* the paten has been purified and while the chalice is taken with the right hand. Which of the two views is the right one?

The difference in opinion is caused by an actual difference between the rubrics in the *Ritus servandus* in the Missal, and those found in the Canon itself, and thus both priests may quote the rubrics. The rubric in the Canon to which Father A. may refer, reads: *Deinde discooperit calicem, genuflectit, colligit fragmenta, si quae sint, extergit patenam super calicem, interim dicens: Quid retribuam . . . calicem salutaris accipiam . . .* And only then follows: *Accipit calicem manu dextera et eo se signans dicit: Sanguis Domini . . .* Contrary to this *rubrica specialis* the *rubrica generalis* in the *Ritus servandus* regulates ceremonies and words in the following manner: *Deinde depositis manibus dicit secreto: Quid retribuam . . . retribuit mihi, et interim discooperit calicem, genuflectit, surgit, discooperit patenam, inspicit corporale, colligit fragmenta cum patena, si quae sunt in eo, patenam quoque diligenter cum pollice et indice dexterae manus super calicem extergit et ipsos digitos, ne quid fragmentorum in eis remaneat. Post extersionem patenae iunctis pollicibus et indicibus calicem dextera manu*

infra modum cuppae accipit, sinistra patenam, dicens: calicem salutaris. . . . While, therefore, the words *Calicem Salutaris,* according to the special rubrics (*infra missem*) must be spoken during the extension of the paten, the *rubrica generalis* directs quite plainly that these words should be spoken *post extensionem patenae.* It appeared, therefore, to some authorities that it was optional with the priest to speak these words either during or after the *Extensio patenae.* This is the opinion of de Herdt, who, in his *Prax. S. Lit.* (*tit. I., n.* 267), writes: "During the gathering of the particles and the extension of the paten the priest may say the words: *Calicem Salutaris,* in accordance with the rubrics contained in the *Ordo Missae,* according to the general rubrics, however, these words are spoken *after* the purifying of the paten," and in the following paragraph (*n.* 268) he says: "Taking the chalice in his hand the priest says the words *Calicem Salutaris*—unless he has already said them while gathering up the particles and purifying the paten."

Other authorities believe, however, that these words should be said after the *extensio patenae,* when actually taking the chalice. Thus teaches Meratus (*ad Gavantum. t. I., p. II., tit. X. N.* 12). This is also the opinion of St. Alphonsus and of most rubricists following him, thus J. Fornici (*Institution, Lit., p. I., c.* 31), Jos. Schneider, S.J., in his *Manuale Sacerdotum,* and Hartmann in the *Repertorium.* Moreover, Benedict XIV. has defended this view in his book *De Sacrificio Missae.* If number and importance of these authorities are considered this opinion deserves preference. But it does so also for intrinsic reasons. The rubrics *in ordine missae* are brief and find explanation in the *rubricis generalibus,* which, in our case, direct explicitly the order of ceremonies and words, while the special rubrics do this more summarily. Furthermore, the principle that actions and words should agree must be considered. This agree-

ment is present if the words *Calicem Salutaris accipiam* are said while the hand takes the chalice. Nevertheless, so the *Monitore Ecclesiastico* observes, we should not find fault with one who adheres to the special rubrics in *ordine missae,* because these are indeed the weightiest and most authentic guide for the offering up of holy Mass.

IG. RIEDER.

LXX. HOW MAY MISTAKES MADE IN THE PRAYERS OF THE MASS BE REMEDIED?

Father Perplexus, a priest suffering in a high degree of absent-mindedness, commits at holy Mass not infrequently small errors and various mistakes, which he then strives to remedy in various ways. We will quote a few of these errors together with his attempts at correction, and examine them critically.

(1) Now and again it happens that our Father Perplexus, in his haste, omits the *Gloria,* or *Credo;* if he, directly after the *Dominus vobiscum,* realizes the omission he then recites the *Gloria,* or *Credo,* without repeating the *Dominus vobiscum.*

(2) Occasionally he takes the wrong proper: if then, during the Mass, he becomes aware of his error, he is in doubt whether to continue the Mass begun, or pass over to the Mass of the day. His practise in this respect differs and is uncertain.

(3) Sometimes he forgets to take a prescribed *Collecta* and only remembers it at the *Post-Communio:* then he endeavors to make good his mistake by supplementing the first *Oratio* and the *Secreta.*

(4) If through forgetfulness he takes the *Communicantes commune* and recalls at its conclusion that a *Communicantes proprium* was prescribed, he does it all over by repeating the whole *Communicantes* in the proper form.

(5) Once when at the first consecration he absent-mindedly had said the words *bibite ex eo,* instead of *manducate ex hoc,* he corrected himself quickly and then proceeded; another time, however, the same error having happened, he did not consider such a correction sufficient, but begins once more with the words *Qui pridie, quam pateretur,* etc.

(6) Sometimes the first prayer after the *Agnus Dei,* omitted in Requiem Masses, escapes his attention, if he then becomes aware of the omission after the second prayer, he inserts the first prayer here and then goes on with the third prayer.

Now let us examine what is to be thought of these attempts at correction made by Father Perplexus. First of all, let us recall the three principles which must guide us in judging these cases:

(1) Parts of holy Mass that belong to the essence of the Sacrifice must, in every case, be repeated if one becomes aware of a mistake before the Mass is finished. (2) Prayers not essential, but important, must, in case of a mistake, be repeated if noticed so soon that the words still have a proper meaning at that place, and provided it can be done without exciting undue comment. (3) Less important parts, or prayers, especially such that do not always occur in holy Mass, need not to be repeated, if they have been forgotten at their proper places (*cf. Ligouri, Theol. Moral. I., VI., n.* 403 *sq.; Lehmkuhl, Theol. Moral. II., n,* 241 *sq.*).

In the light of these principles it is not difficult to judge these various cases. *Ad.* 1, Father Perplexus should not have repeated the *Gloria* and *Credo* because these prayers are not very important and do not occur in every Mass: moreover, the repetition of these prayers could hardly take place without exciting comment. Lehmkuhl (*l. c. n.* 242) says about this: *Glaria, Credo et similia ne unquam sacerdos resumat, neque epistolam, evangelium, etc., si unum pro altero sumpserit, nisi forte ab initio falsae epistolae, etc., errorem animadvertat. Ad.* 2, In this case Father Perplexus should at all times have acted on the principle which applies in this respect to the breviary, namely, *error corrigatur, ubi deprehenditur,* if it could be done without comment and without long search. *Ad.* 3, When one notices only at the *Postcommunio* that an *Oratio* or *Secreta* has

been left out, it is not necessary to repeat them, because, as a rule, these prayers have no longer the proper meaning at that time. If one remembers at the *Secreta* that the first *Oratio* has not been recited, then it will not be out of place to make up for it; but it is not necessary in this case. *Ad.* 4, Father Perplexus need not repeat in this case, because there is no essential difference between the various *Communicantes,* and because that which is peculiar to this prayer does not belong to the more important parts of holy Mass (*cf. Lehmkuhl, l. c. n.* 241). The same rule would apply if in regard to the Preface such a mistake happened. *Ad.* 5, Since the words in which Father Perplexus erred do not belong to the strictly essential formula of Consecration, it suffices if he simply corrects himself as is done generally in speaking or reciting, and which is quite intelligible. This would even suffice in the strictly essential words of the Consecration. But here, where absolute security is necessary, it would be advisable *ad cautelam* to begin all over again; if one, for instance, had said *calix,* instead of *corpus,* he should recommence with the words *Hoc est enim,* etc. *Ad.* 6, The attempt at correction made by Father Perplexus in this case may be regarded as permissible, as this prayer is not out of order even in second place, and gives there a good meaning.

Similar faults, or errors, in the prayers of the Mass, of which various others may occur, should be judged by the rules given above, and remedied accordingly.

Dr. Joseph Niglutsch.

LXXI. HOW SHOULD A PARISH PRIEST ACT TOWARDS AN APOSTATE PARISHIONER WHO IS SERIOUSLY ILL?

A certain pastor learns that one of his parishioners (*i. e.*, living within the limits of the parish), who, although baptized a Catholic, had fallen away from the faith and who has often, by word and deed, declared himself a free-thinker, has fallen seriously ill. Since the man has for many years not attended church, and kept aloof from all exercises of Catholic worship, the pastor is in doubt whether he is obliged to exercise the solicitation for the spiritual welfare of his flock even in this case.

There can be no reasonable doubt but that the pastor *must* offer spiritual aid to this sick man, and should employ all his zeal in order to save this soul. Even if the man has neglected the faith and has in every sense of the word become an apostate, still he has, on account of the ineffaceable character of Baptism, never ceased to be a member, though a dead one, of the Church, and, since he did never formally join another creed, also a member of the parish in which he lives. For this reason the pastor is obliged *ex officio* to offer him, even if not sent for, spiritual assistance, the same as to any other sick parishioner. He should not hesitate, therefore, to visit the sick man for this purpose. But since here is the object a work as important as difficult, namely, the conversion and rescue of a soul hardened in unbelief, he should seek, first of all, by fervent prayer the necessary assistance from above. If circumstances permit, he should turn his steps first to the tabernacle of the Lord, in order to commend himself and the sick man to Him who can give counsel and potent aid,

and who knows how to turn the hearts of men. Having thus prayed ardently for assistance, and having also asked for the sick man the grace of conversion, he may with confidence in Divine succor endeavor to get into the presence of this parishoner. Very likely admission to the sick man will be denied him by members of the household. In this case he should not give up without pointing out to the relatives the heavy responsibility they are taking upon themselves, and draw their attention to the fact that if the sick man dies in refusal of the holy Sacraments he cannot be buried in consecrated ground. If his admonitions remain unheeded he should leave without bitterness, but manifesting regret. If, however, access to the patient is secured, the pastor should greet him with the expression of kindly sympathy, and unless there is *periculum in mora,* casual inquiries about his condition may open the conversation. Only after he has put the patient at ease, he will lead the conversation to the actual aim of his visit and offer his priestly services. The manner in which this offer is received will generally indicate what hope may be entertained for success. But even if in consequence of a cold refusal there seems to be little hope, still the priest must not give up so quickly, but should strive, by a reference to the serious situation rather than by admonition, and by expression of solicitous affection, to lead the sick man to better thought. If, despite all this, the visit remains unsuccessful, let him take his leave without reproach or threat, but with renewed assurance of tender sympathy and with cordial wishes for physical and spiritual welfare. And since real love will hope against hope, let not the zealous pastor content himself with one attempt and visit, but after repeated recourse to the Saviour in the Blessed Sacrament, he may venture, if possible, a second and third visit. Should the sick man then in the most positive manner declare that in no case will he receive the Sacraments, perhaps even forbid

further visits, then the pastor, conscious of having done his utmost, may discontinue his visits, but, before departing, should express his heartfelt sorrow that the patient in the most important and finally decisive moment of his life rejects Divine mercy, and impressively give words to the fear that the patient may soon have to face the justice of Him whose mercy he now scorns.

Let us suppose now that the sick man gives evidence; from the beginning or in response to subsequent efforts, that the pastor's earnest solicitations will probably be rewarded with success. What is the pastor to do in order to conduct this most hopeful beginning to a happy end? Giving thanks to God, and with heartfelt prayers for continued assistance, he must, above all, by dwelling on the mercy of God, seek to inspire confidence and dispose the patient for the reception of the holy Sacraments. Since the person through openly declared apostasy has incurred excommunication specially reserved to the Pope, the priest, unless there is *periculum in mora,* should procure the necessary *facultas absolvendi.* If this cannot be done, on account of urgent danger of death, then he may without special faculty absolve the sick person directly from the excommunication, but he must insist that the person renounce his errors publicly, *i. e.,* before at least two witnesses, and manifest his reconciliation with the Church. If circumstances (necessity and possibility) suggest it, he will instruct the patient briefly in the nature and effects of the Sacraments, as also the conditions required for receiving them, and administer them with perhaps even greater gentleness and indulgence than he would to other parishoners in danger of death. If the sick man recovers from his illness he need not confess the sin of apostasy, by which censure is incurred, either to the Pope or his delegate, as he has in *articulo mortis* already been directly absolved from the same.

There is no need of applying through the confessor to the Holy See after he recovers, for Canon 2252 of the Code which repeats the former concession of law that any priest may absolve a person who is in danger of death from any sin and censure, no matter how or to whom reserved, rules that recourse, under the penalty of relapse into the same censure, is demanded only in case the sick person was absolved from a censure *specialissimo modo* reserved to the Holy See. In this point the Code is more lenient than the former law which required the recourse to the Holy See also for censures *speciali modo* reserved to the Holy See. Now, since Canon 2314 punishes apostasy and heresy with excommunication *speciali modo,* not *specialissimo modo,* reserved to the Holy See, no recourse will be necessary if this man can be persuaded to make his confession and he happens to survive the danger and recover from his illness.

In order not only to protect the convalescent against relapse, but also to promote his spiritual life and to assist him in making reparation for any scandal given, the priest should devote to him, without becoming obtrusive, some of his time by visits, and may render further assistance by offering appropriate reading, and by remembering him especially at holy Mass, *ut Deus confirmet quod operatus est in eo.*

Should the sick man die without becoming reconciled with the Church, Christian burial must be refused him. If, on account of this, the pastor should encounter much difficulty, he should submit the case to the ordinary.

BERNARD SCHMID, O.S.B.

LXXII. JURISDICTION TO HEAR CONFESSIONS OF NUNS

Father Anselmus is the spiritual director and regular confessor in a convent, the members of which belong to a recent congregation of women, undertaking the care of the sick in their hospital as well as in homes of the immediate vicinity. The following case happens: Two sisters have been nursing a wealthy woman at her nearby home. The patient, partly recovered, is advised to take certain baths, and she asks and receives permission for the two nuns to accompany her on the journey. On the way, in the town B., her condition becomes worse, and the journey has to be interrupted. The two sisters, now nursing her again, report the fact to their spiritual director and request instructions for making their weekly Confession.

What answer should be given? The case is somewhat perplexing to Father Anselmus, for the town B. is the see of another diocese; in his own diocese the answer would be easy, furthermore, the sisters know the diocesan regulation according to which cloistered women when sojourning anywhere in the diocese may confess to the local pastor, or to a priest approved for hearing Confessions of nuns if such a one be at the place. Concerning another diocese the diocesan regulation says nothing, which is natural, since the bishop has no authority to make regulations in another diocese. Some hand-books advise that the priest should ask nuns who sojourn outside the cloister and come to Confession, whether by their rule they are allowed while abroad to confess to any priest, and if so their Confession may be heard without hesitation. It is here the question what the sisters would have to answer.

Father Anselmus reasons as follows: My sisters are not *moniales,* in the strict sense of the word, but members of a congregation. Strictly speaking, the ecclesiastical precepts regarding the reception of the Sacrament of Penance by nuns are not applicable to them, and they may consequently confess to any priest of jurisdiction in his particular diocese. Opposed to this view, however, is the fact that bishops appoint confessors also for these sisters, and bishops have in their diocese the disposition over jurisdiction of Confession. It will not do to disregard this fact. Finally, a happy thought came to Father Anselmus: Whoever has the *ordinaria iurisdictio* can exercise the same everywhere over those in his charge without restriction as to place, thus a pastor may hear the Confessions of his own parishioners anywhere. Being the *confessarius ordinarius,* thus Father Anselmus reasons further, I can therefore hear the Confessions of my sisters wherever they may happen to be, consequently also in B. The trip to B. is short and convenient, moreover Father Anselmus has frequently other business there. The mansion occupied by this wealthy patient has a chapel, and Father Anselmus can there with all comfort hear Confessions. Notice to the pastor is thus made unnecessary. What is to be thought of this disposition?

The case suggests the following questions: 1. What is the law of the jurisdiction of Confession regarding members of recent congregations of women? 2. What priests may hear the Confessions of sisters sojourning in another diocese, or, generally, outside their convent? 3. Has the *Confessarius ordinarius* a regular jurisdiction? 4. May the holy Sacrament of Penance be administered in a private chapel?

Ad. 1. In these days diocesan bishops, as a rule, appoint for congregations of women special confessors, ordinary as well as extraordinary, in the same way as canonically provided for real nuns,

It cannot be doubted that this usage is very beneficial; it also corresponds to the views of the Apostolic See, as repeatedly made known in former decisions of inquiries in this respect (See Müller, *Theologia mor.* 1887, *I. III, p.* 326).

Canon 520 of the Code demands that the bishop appoint one ordinary confessor for each religious community of women, and also an extraordinary confessor whom all the Sisters must approach at least four times a year (Cf. Canon 521).

Ad. 2. About the answer to this question there can be no doubt. Religious women sojourning outside their convent can be absolved by every priest who has the faculty to hear Confessions validly and lawfully; the canonical restrictions of jurisdiction over cloistered women apply only at their convent; this is presumed in all related papal precepts, and a priest has no jurisdiction to hear Confessions of nuns at their convent unless so appointed. There is even a decision of the Holy See, of the year 1852, which directly confirms this view, and according to which nuns sojourning outside the convent may make their Confession to any priest approved to hear Confessions. (*Responsum S.C. Ep. et Reg., August* 26, 1852.) If this is the rule in respect to real nuns, it is all the more applicable to members of congregations. There can, of course, be meant only a priest authorized to hear Confessions in that particular diocese.

Canon 522 of the Code is more explicit than former regulations; it states absolutely that Sisters have the right to confess to any priest approved in the diocese if for the peace of conscience they confess to him in any church, public, or semi-public oratory.

It follows that the question which, according to many authorities, should be asked of nuns under such circumstances, respecting their rule regarding Confessions, has no practical value; at most the rule would only refer to the permissibility of the act on part of the

nuns. That the latter know their rule thoroughly and keep it may be presumed. The jurisdiction to hear such Confessions depends upon other things which the priest has to know. As concerns our case, Father Anselmus might have easily removed the difficulty, had he looked into the matter more carefully.

Ad. 3. Father Anselmus, though he has the title of ordinary confessor, has by no means on that account ordinary jurisdiction. The word "ordinary," in this connection, means, that he may exercise his office ordinarily, or regularly, while an extraordinary *confessarius* acts only at times, therefore not ordinarily. Father Anselmus is in reality only delegated, with jurisdiction for three years, by the bishop, who possesses the ordinary jurisdiction for Confession over the nuns of his diocese. Father Anselmus perhaps wrongly applied the usual definition of the *iurisdictis ordinaria,* as one possessed by a priest in virtue of his ecclesiastical office. His jurisdiction is only a delegated one, subject to very special canonical rules. (See *Lehmkuhl, Theol. Mor.* 1885, *vol. II. De illa iurisdictione delegata, quae lege speciali regitur, punct. II. p.* 288.) The conclusion arrived at by Father Anselmus was therefore quite incorrect, and hence it follows that he absolved without jurisdiction, and therefore invalidly. Not even can he avail of the principle stated above, *sub.* II., because he was not privileged to hear Confessions in the diocese of B.

Ad. 4. Father Anselmus arranged matters very conveniently for himself, but he violated the ecclesiastical precepts concerning the place for the reception of the Sacrament of Penance. According to them, Confessions can only be heard in a church or a public oratory, cases of necessity excepted. In private oratories the Sacrament of Penance can be administered only by special permission of the bishop. The chapel in which Anselmus heard Confessions was

not really a chapel, because celebration of holy Mass was not, as appears from facts stated, allowed there, and, consequently, it cannot even be considered a *proper* place to hear Confessions, except in a case of necessity, which here did not prevail. In a church the confessional is the only place intended for the administration of the holy Sacrament of Penance, and particularly in the case of female penitents this is made a strict order by ecclesiastical legislation, and in the case of nuns it is, moreover, decreed: *Ex declaratione S. C. praecipitur, confessionalia monialium amoveri a sacristia vel aliis locis occultis, sed collocari in exterioribus ecclesiae. In necessitate tamen licet audire confessiones in alio loco, modo vitetur aspectus confessarii et monialis.* (*S. Liguori, Theol. mor. I. VI. n.* 577, 4.)

Dr. Johann Kubicek.

LXXIII. ABSOLUTIO IN PERICULO MORTIS

Father Blasius, a newly ordained priest, who, after his first Mass, spent some time in his native parish, and had as yet not received jurisdiction, was requested by the pastor, the only priest in the parish, to take the Viaticum to a certain Augustina who was dangerously ill and who had made her Confession the evening before. As Father Blasius entered the sick room, Augustina said: Father, I wish to confess once more. Father Blasius was perplexed. Augustina, who, the previous day, had been at the point of death, had rallied and it was probable that she would live a few days longer. The *articulus mortis,* in which in absence of a priest with jurisdiction any priest may absolve, is not present, and Father Blasius does not know what to do. To omit giving her holy Communion would be noticed and would cause comment, nor could he send for the pastor. Father Blasius resolved to act as follows: He consoled Augustina, and took great pains to dispose her for perfect contrition, and then having in his opinion succeeded, he administered the Viaticum to her. Now he asks whether he has done right.

We must say: No. Since Father Blasius did not hear Augustina's Confession, he could not know whether she did not have grievous sins upon her conscience; again, the Confession made the day before might have been a sacrilegious one. If this were the case then perfect contrition would not suffice. By a rigid law of the Church (*Conc. Trid. Sess. XIII., cap. 7 and can.* 11) it is prescribed, that the state of grace, as an indispensable condition for the worthy reception of the holy Eucharist, must be gained not merely by perfect contrition, but by sacramental Confession and

absolution, with the sole exception of a case of necessity where no confessor is available. This case of necessity did not prevail here, because even if the pastor could not be had, Father Blasius could *in periculo mortis* absolve. Father Blasius perhaps refers to Gury, who, in his *Compendium II., n.* 498, in a note says: *Ad quaesitum: Quid, si in loco, ubi, ut par est, mos exsistit, aegrorum confessiones ante delationem ss. Sacramenti excipiendi, infirmus, antea confessus et jamjam per s. synaxim reficiendus, v. g. eo quod confessiones praeteritae invalidae fuerint, iterum confessionem petit, quae sine infama aegroti audiri nequit, cum prolixior futura sit? respondet Alasia: Si sacerdos, qui Sacramentum defert, ipse ad confessiones approbatus est, audito aliquo peccato graviori infirmum (quem dispositum supponimus) absolvat, ipsi s. eucharistiam praebeat et ss. Sacramento in ecclesian delato redeat, integram confessiorem excepturus.—Item infirmum absolvere potest sacerdos, licet non approbatus, cum urget casus (ob mortis periculum).—Si vero casus non urget et sacerdos ille approbatione caret, sed alius approbatus praesto est, hic accersatur, ut confessionem excipiat; secus ipse non approbatus infirmum brevi adjuvet ad actum perfectae contritionis eliciendum et s. communionem illi praebeat.* According to this Father Blasius would appear to have proceeded correctly. But apart from the fact that we venture to doubt the correctness of the above opinion, we dispute the similarity of the case. In the cited case reference to a Confession *quae sine infamia aegroti audiri nequit,* while in our case we are unable to discover any danger of defamation if Father Blasius had absolved her. Father Blasius, hence, should not have been satisfied with the *contritio* of Augustina. Moreover, it is uncertain whether Augustina's contrition was really a perfect one, and must not the salvation of the dying be cared for in the best possible way? It occurs to us also that Father

Blasius appears to make a vast difference between *articulus* and *periculum mortis.* He is wrong in doing this (compare *S. Lig. Lib.* 6. *n.* 561; *Gury II., n.* 551; *Ballerini-Palmieri V., n.* 590, and others). If in *periculum mortis* one had to await the actual *articulus mortis* in order, for instance, to be able to absolve a patient from a reserved case, many would die without absolution. The Church bestows, in danger of death, such far-reaching authority *ne quis pereat.* This must be well remembered. For this reason the *periculum mortis* and the *articulus mortis* are considered of equal weight. Even if there was a possibility that Augustina might yet live for a few days, still this could not be expected with certainty. Very often it happens in the case of very sick persons that an apparent improvement immediately precedes death.

What should Father Blasius have done? First of all he should have asked Augustina privately *why* she desired to confess again, since she had done so only the day before. To such question several answers are possible. We will take three of them into consideration: (1) She might have referred to the fact that every worthy reception of the holy Sacrament of Penance increases sanctifying grace and enhances eternal glory, and, therefore, wished to confess once more. In this case Father Blasius would have had good reason not to hear the Confession, because the Church gives him jurisdiction only in case of necessity, and a case of necessity was not present here. (2) Augustina might have stated, "I forgot a sin yesterday and it makes me uneasy." In this case, too, Father Blasius could have refused to hear the Confession, because the Confession was not necessary for the worthy reception of the holy Viaticum. He should have informed the patient that she need not fear that the Confession was unworthy *ex conscientia erronea.* Who in Confession forgets a grievous sin *inculpabiliter,* and is otherwise

disposed and receives absolution, is justified *non per solam contritionem sed per sacramentalem absolutionem.* He is absolved from the forgotten sin, though only indirectly. To confess the same, especially before receiving holy Communion, in order to be directly absolved therefrom, is *de consilio,* but not *de praecepto.*. Augustina might have confessed it after receiving holy Viaticum, when the pastor could be sent for.

3. Augustina may say: "The reason why I want to confess again I can only reveal in Confession itself." In this case Father Blasius should have heard the Confession. It might transpire in the Confession that Augustina had been ashamed to confess her sins to the pastor, that, for this reason, she had concealed grievous sins and made a sacrilegious Confession, or it might be that her Confession had not been made at all because as the pastor, as *complex,* had no jurisdiction over her *praesente in loco alio sacerdote,* and perhaps the whole proceeding had been designed as an expedient. In both cases Father Blasius could and should certainly have absolved the well-disposed Augustina, even though the pastor had been in immediate proximity, so that he easily might have been called. Finally, it might be the case that Augustina had committed a grievous sin since her Confession the day before. This case is the most difficult to solve. There is no doubt that Father Blasius could have absolved Augustina if the pastor was some distance away, an hour's travel, perhaps; but whether he could absolve her if the pastor was near enough to be called is the question. We should have advised Father Blasius to give absolution, for, in the first place, there was really great danger of defamation for Augustina if the pastor had to be called to absolve her. People might suspect a very grievous matter if so much agitation was observed. The approved priest was in this case physically, but not morally, present. This is equivalent to his not being present at all.

Consequently, the *simplex sacerdos* could here absolve *in periculo mortis.* And, secondly, we claim the view that a casual priest could absolve a dying person, therefore in *periculo mortis,* also *praesente alio sacerdote approbato qui v, gr. vel commode acciri possit vel etiam in eadem domo habibet,* is not without probability. St. Alphonsus, it is true, regards (*Lib. VI. n.* 562) the opinion that such absolution is not permissible the *communissima,* and one should not deviate from the same without *rationabilis causa,* but the opposite opinion is also held and defended by many and prominent authorities. St. Alphonsus himself (*l. c.*) enumerates *expresse* sixteen such authors, and their number is therewith not at all exhausted. We will quote here the answer of the renowned theologian, Cardinal Lugo, to Aloysius Turrianus, who had declared the latter opinion to be *improbabilis.* He answers as follows: *Unde constat, excessisse in censura hujus opinionis Luisium Turrianum, dicendo, hanc opinionem esse improbabilem . . . Certe sententia, quam tot et tam graves Doctores tenent, negari non potest, quin probabilis sit, praesertim cum fundetur in verbis Tridentini, quae non facile explicari possunt ab adversariis.* Viva regards the former opinion not as *communissima,* but only as *communior,* and even St. Alphonsus uses a very moderate expression by saying (*l. c.*): *Puto non recedendum a prima sententia.* Father Blasius, according to our view, might have acted on the second opinion, since the same is probable and because there was a *rationabilis causa* to depart from the more exacting opinion. This *rationabilis causa* we find in the fact that public notice was to be avoided, and also in the fact that Augustina otherwise would have been obliged to confess the same sins once more, althought she was disposed to receive absolution and entitled to it.

The Congregation of the Sacred Office issued the following decision on July 29, 1891: *Non sunt inquietandi, qui tenent validam esse*

absolutionem in articula mortis a sacerdote non approbato, etiam quando facile advocari seu adesse potuisset sacerdos approbatus; nec qui tenent validam esse absolutionem in eodem articulo mortis concessam a peccatis reservatis, sive simpliciter sive cum censura, per sacerdotem non habentem jurisdictionem in reservata, etiamsi advocari seu adesse facile potuisset sacerdos habens praedictam jurisdictionem.

Canon 882 of the Code has settled this point beyond all doubt for it states that in danger of death all priests, though not approved for confessions, can validly and licitly absolve any penitent from any sins and censures, no matter that they are reserved and notorious, and they may give the absolution though an approved priest is present.

Prof. Joseph Weiss.

LXXIV. PRESERVING THE SEAL OF CONFESSION BY THE CONFESSOR AGAINST HIMSELF

It is the strict and sacred duty of the confessor to observe inviolable silence in regard to everything heard in Confession, as far as it in any way relates to sin, and to avoid everything that directly or indirectly might lead to a revelation of what has been confessed, or to any embarrassment for his penitent. Towards the latter the confessor must not in any way let his conduct outside the confessional be guided by what he has heard him confess in the tribunal of Penance. Is the confessor obliged, in regard to knowledge gained in Confession (the sins of a penitent) to preserve secrecy even toward himself? This theoretically not unimportant, and practically essential, question may be illustrated by an example, and then argued by the facts.

A confessor hears of grievous and scandalous sins in the Confession of a penitent unknown to him. A curiosity to know who this penitent may be causes the confessor to take steps to ascertain the identity of this person. Has the confessor, by this effort, committed a sin, and of what kind? It is presumed here that a violation of the *sigillum sacramentale,* in the ordinary sense, has not taken place. We answer:

I. It is almost certain that the confessor trespassed against charity. Indeed, there may be cases (if in very grave sins a penitent has special interest not to be recognized) in which such conduct of a confessor must be considered a grievous sin against charity.

II. The decision whether the confessor has also sinned against justice, in the sense of *detractio,* and against the Sacrament, by way of a *fractio sigilli sacramentalis* depends upon whether the penitent

by making Confession resigns his right to a good reputation, as far as the confessor is concerned, or not. The following points seem to speak for the first supposition.

1. The Sacrament of Penance is carried out in the manner of a tribunal. In no tribunal has the accused—be the proceeding public or not, be the verdict made public or not—the right to remain unknown to the judge.

2. No fear, however well founded, of losing the good opinion of the priest by confessing sins can excuse from the obligation of confessing or from the integrity of the Confession.

3. In order to ascertain whether, in a certain instance, a law or commandment holds good, it is to be considered whether this law or commandment applies under all ordinary circumstances. If this be not the case, then in general the non-existence of a law or a commandment may be concluded. Ordinarily, however, the confessor does know his penitent (except in large cities), and the contrary is usually the exception.

4. Formerly there was the obligation, at least at stated times, to confess to one's parish priest (pastor), and the meaning of still existing reservations is, indeed, that such penitents have to present themselves in person before the bishop (Pope) to receive absolution. That under such conditions an *incognito* is not easy to maintain is evident. It seems to follow that the Church does not make provision that the penitent remain unknown to the confessor.

5. If we would recognize it as an actual right of the penitent that the confessor in the above case, and in similar cases, must avoid all inquiry as to the name of the same, then this right would have to be accorded to all penitents. This would be in contradiction to the view and practise of learned and conscientious priests, who do not hesitate, upon occasion, to inquire for the names of penitents.

III. To these arguments it may be objected:

1. The comparison is not justified. In a court an exterior act is performed, the justice of which must be publicly perceptible, an act that entails public consequences in which the knowledge of the personality of the accused is almost inevitably necessary; in the Sacrament of Penance there is judgment made only in regard to the inner life; there are no consequences regarding the standing of the penitent in society; his name plays no part; and for this reason the Sacrament of itself does not violate such a right of the penitent, nor bestow it upon the confessor.

2. If the commandment of Confession and of its integrity is so strict that before it the protection of the good name of the penitent with regard to the confessor must yield, it does not follow that regard on part of the confessor for the reputation of the penitent may be left out of consideration if the administration of the Sacrament does not compel it.

3. This principle may probably govern when there is question of gaining a right, of establishing a new obligation; not, however, when the application of an already existing right is concerned, of an already existing obligation. Of course the penitent through Confession gains no new right to his good name, but he retains his old right so long as it is not abrogated by the collision of right and duty.

4. This proves only that the Church, in respect to the Sacrament of Penance, may make laws without giving heed to the guarding of the penitent's good repute with the confessor. Compare the above objection to 2. Furthermore, the rights given the faithful in these times in regard to the choice of the spiritual director, and the present usage in regard to reserved cases, shows what tender regard the Church manifests for the honor of penitents.

5. The reason of the absolute necessity of complete and uncondi-

tional secrecy regarding that what is heard in Confession, and in any way relates to sin, is not merely the guarding of the penitent's honor, but also regard for the manifold consequences that would arise from any kind of permission to reveal such matter. Such consequences are not anticipated in our case (if the secret is faithfully observed), and there exists here only the consideration for the penitent's honor. And this is the standard for an obligation of the confessor in this connection. By venial sins the confessor's regard for a penitent is hardly lessened, and even in the case of grievous sins it is not always seriously injured. It is, indeed, held by many theologians that by communicating a grievous sin of a neighbor to a trustworthy person where no danger of further disclosure is to be feared, no serious injury to the good reputation takes place, and therefore no grievous sin. Furthermore, the confessor is aware not merely of the sin, but also of contrition and absolution, and in his eyes even a great sinner has, perhaps, gained more than lost by the Confession. However, in judging this matter, the ordinary view of what is dishonorable or not, and the penitent's own view thereon, is more to be considered than the merciful viewpoint of the priest. Stress must finally be laid upon the fact that while the penitent frequently voluntarily renounces all claims to the good opinion of the confessor, in the case of venial sins especially, but also in the case of grievous sins, it must be remembered that this is not always the case, that often penitents, so as not to lose the personal esteem of their confessor, will make great sacrifices in order to find a priest to whom they are unknown. From these arguments it seems proper to draw these conclusions:

(a) It cannot be proven that the penitent by making Confession *eo ipso* renounces his claim upon the esteem of the confessor. That he frequently does not intend this is well known.

(b) Ascertaining the name of a penitent means, under circumstances, the loss of the confessor's esteem.

(c) The confessor, who, induced by the contents of the sacramental Confession, takes steps to procure for himself the knowledge of the penitent's name, misuses, if none of the mentioned, justifying, excuses exist, the Sacrament for the defamation of the penitent in his (the confessor's) eyes. There is then present the *detractio,* with the special *malitia* of the *fractio sigilli.*

The application of these conclusions to question 2 of our case is self-evident.

The matter assumes another aspect if the confessor seeks information respecting the person of the penitent, not on account of the matter confessed, but for other reasons, even if he remembers that in the Confession grievous and scandalous sins were mentioned. From the standpoint of justice this cannot be designated as unlawful. For, in the first place, the act of going to Confession is an exterior act that may be observed, and which obliges therefore not to secrecy; furthermore, the penitent, while not losing the right respecting his honor through his Confession, does not gain a new right, so that the confessor is not prevented from doing something which he concluded to do uninfluenced by anything he has heard in Confession.

This case—special attention should be paid to this—is only apparently identical with the first mentioned, but differs from it in the motive. In the one case (second case) the inquiry is, who is he who performed the exterior action of the reception of the Sacrament. In the other (first case), however, the inquiry is, who made this particular Confession—who is the one who declared himself guilty of these scandalous sins—and this latter is manifestly trespassing the sacred precincts of the Sacrament. Of course, in practise the bounds between the lawful and unlawful are not always easy to draw; but

that is not an objection against the accuracy of our argument. It may be rightly expected that a priest, worthy of the name of confessor, will willingly impose a sacrifice upon himself for the honor of his penitent, excepting naturally cases where just the priest's reserve might be interpreted to the prejudice of the penitent and thus might lead to an indirect and exterior *fractio sigilli.*

AMBROSE RUNGGALDIER, O.F.M.

LXXV. *POSSESSOR BONAE FIDEI* AND THE DUTY OF RESTITUTION

Caius received a watch as a present from Titus, and now discovers with certainty that Titus was not the rightful owner. He asks his confessor for instructions regarding a possible obligation of restitution devolving upon him. Caius is lawful owner of the object, of the watch, if he has had possession of the same *bonae fidei* for the term provided by law. In many places the law provides a period of six years for this purpose, in the case of movable objects. Apart from such legal title Caius is the owner of the watch, moreover, if he obtained the same at a public auction, or by purchase in any way whatsoever. If Caius has not possessed the watch for the legal term, nor acquired it in any of the lawful ways just mentioned, he is not the lawful owner and must, as honest possessor (*possessor bonae fidei*), make restitution to the rightful owner. If the owner is known, and as Caius has received the watch as a present, he must immediately restore it to the owner; this is evident. But if he has acquired the watch by purchase he may, if there is no other means of recovering the purchase price, return the watch to the former unrightful possessor, and reclaim the purchase money; in other words, he should rescind the deal. Even though Lacroix (1. *m. p.* 2, *n.* 100-103) states the opinion, that the object must be restored to the rightful owner, if known, even if there be danger of not recovering compensation, because it is unjust to make once more doubtful the return to the owner, or because one, in order to save one's own garment, may not throw that of another into the fire, yet such renowned authorities as St. Alphonsus and Cardinal Lugo support the

opinion that the obligation of restoration is not certain, indeed that the permissibility to rescind the deal, by returning the object to the thief against restoration of the purchase price, is more probable. (*L. III.* 569.) In proof thereof St. Alphonsus reasons: I am not *per se* obliged to maintain the property of another to my own prejudice, and hence I may allow that the thief gets possession of the object in question, so that I may not suffer injury to my property, just as when finding money in the public street, and having picked it up for the owner, I may put it down again (even at the danger that some thief may get it), if I expected injury from taking it in keeping. Furthermore, I have the right to rescind a contract invalid *in radice,* even though through the rescinding *per accidens praeter intentionem* a third party should suffer. *Aliud est rem alterius auferre, aliud non servare. Aliud damnum alteri inferre, aliud damnum alterius permittere.*

If the owner cannot be ascertained, then the position of Caius is the same as that of a finder of lost articles. If there is any hope of ascertaining the owner, inquiries for him must be made, the finder in the meantime taking care of the article; but if not, the finder may keep it and do with it as he pleases. *E ita fert usus universalis.* (*Marc I*, 999.)

GEORGE FREUND, C.SS.R.

LXXVI. A TRAVELING SALESMAN'S EXPENSES

Titus travels for a large business house. He lives very sparingly on his business trips in order not to make large expenses for his firm. This is known to his wife, who often upbraids him for it. In order to make things comfortable for her husband, at least during the days he spends with his family, she takes, every time he returns from a trip, secretly about a dollar from the money he brings back. This amount is then by Titus included in the expenses, in the belief that he has spent it on the trip. The wife has been doing this for some twenty years, and has in this manner appropriated altogether some three hundred dollars of the firm's money. She now makes known to the confessor that she has heretofore taken this money *bona fide,* but that she has doubts now whether she is really allowed to do this in future, and what is to be done about the past? What decision must the confessor give?

Since the woman had always acted in the belief that it was quite proper for her to take a small sum from her husband's pocket for the purpose indicated, she has not been guilty of sin. She showed her good faith also in submitting the matter to her confessor at once when she became *possessor dubiae fidei.*

In regard to an obligation of restitution we think we should discriminate. The contract that Titus made with his firm may provide that Titus can place to the firm's account only money really expended on his trips. If this be the case Titus has claim only to his actual outlay; if he charges more, there would be a violation of justice, involving obligation of restitution. It is a matter of in-

difference whether Titus would have been justified in spending more for his sustenance, if, according to his agreement, he can charge only what he actually spends. If he charges more, he appropriates unrightful property. Had he expended more upon the trips the firm would have had to bear the higher expense, and Titus could have charged it to the firm with good conscience. But as he has not expended it, he is not allowed to add anything to the amount of the actual expenses and charge it to the firm. Since Titus has no right to such an added amount, his wife has neither the right to employ such money for the good of her husband. If she does it she is guilty of theft, and obliged, objectively, to restore the unjustly acquired property.

The agreement of the traveling man with the firm, however, may be so worded that Titus may charge to the firm's account whatever he requires for his support on the trip without wanting of anything. If, in the case of such an agreement, Titus was unusually economical on his trips, if he scarcely allowed himself the most necessary, there would be no violation of justice if he saved, by an extraordinary economy to which he was not obliged, an amount to be used in his household, and charge it to the firm. He was, according to the agreement, entitled to larger expenses, and for this reason may keep for himself that which he legitimately might have spent but did not. Since in this case no wrong would be done to the firm, there would be no obligation of restitution for Titus. If the husband is, therefore, allowed to keep for himself whatever he might properly have expended and charge it to the firm, neither does the wife violate justice, if she takes part of that amount, or all of it, from her husband's pocket and uses it for his welfare, although she becomes therewith the cause of a charge to the firm. In this case the wife would, for this reason, not be obliged to make restitution. She

is to admonished, however, to discontinue her practise, or to tell her husband about it and be guided by his instruction.

Is, however, the agreement worded as supposed in the first place, and if there is present the obligation of restitution, it must be ascertained whether the wife is not, after all, released from this obligation. Frequently it will be impossible for a wife to make restitution, especially when it is a matter, as in our case, of a not inconsiderable sum. To make the husband aware of the facts would not only be a hardship, but probably lead to strife in the family, and would probably not bring about the intended result—restitution by the husband. Apart from these difficulties, which of themselves release the wife, we think that in this case there would apply what moralists call *remissio a creditore*. This *remissio* may be *exeplicita* or *praesumpta*. Only the latter comes under consideration here. Of it Reuter writes: *Theol. Mor. p.* 3, *n.* 351: *Qui rem detinet prudenter credens, dominum non esse invitum, non peccat . . . Si autem dubitatur, an dominus esset remissurus, petenda est remissio.* St. Antoninus (*p.* 20. *t.* 1. *cap.* 15) does not oblige to restitution one *qui credit dominum permissurum, et si subest justa credendi.* This is by St. Alphonsus (*lib.* 3, *n.* 700) regarded as: *Sententia satis communis*, and we may apply it to the present case. We may then conclude that if the proprietor of the business did not explicitly present to his traveling man the sum taken by the latter's wife, still Titus, or his wife, may presume this *remissio*. Though, according to the wording of the agreement, the firm's rights have been violated, and therewith the obligation of restitution established, still it cannot be supposed that the proprietor of the business would demand that his traveling man should suffer privation and scarcely allow himself the most necessary. Hence Titus may presume *rationabiliter* that his employer would make him a present of the money thus saved

by excessive economy, if he asked for it. We may suppose such attitude in a man of business who is just to his employees. Titus' economical ways seem to indicate that this employer is a fairminded and just man, otherwise his traveling man would not have guarded his interests by extraordinary economy. Titus did not do this because afraid to make expenses and thus incur the displeasure of his firm, this the wife expressly stated. Zeal and loyalty to his employer were the sole reasons. We may suppose, therefore, that, had Titus asked his employer for it, he would have had the payment of the three hundred dollars remitted. Titus's wife, who has invariably employed the money for her husband's good, may expect the same indulgence.

Titus's wife, therefore, is not obliged to make restitution, no matter how the agreement was worded, because if she really has appropriated unrightful property, she may foresee *prudenter* that the employer would present her with the amount in question.

Dr. Ph. Huppert.

LXXVII. BINATION

By G. Murray, C.SS.R.

Case. Cletus has permission to say two Masses on Sundays and Holydays of obligation, in case of necessity. That is the reading of his diocesan pagella of faculties. One stormy Sunday, after driving to a Mission Station, he says Mass for the benefit of less than a dozen of the faithful whom he finds gathered there. While on a much needed vacation, the guest of a fellow-priest, he does not offer to take one of the Sunday Masses for the pastor, who is forced to binate.

Questions. 1. How is the faculty to binate to be understood? 2. Was Cletus justified in acting as he did?

Solution. Canon 806 contains the law about bination: "On Christmas and All Souls' Day, a priest may say three Masses. On no other day is he allowed to say more than one, unless he has an Apostolic Indult or has the faculty from the Ordinary of the place. The Ordinary cannot give this faculty unless he prudently judges that, on account of the scarcity of priests, a notable part of the faithful would be unable to assist a Mass on a Holyday of obligation. He may not, however, allow a priest to say more than two Masses."

An Apostolic Indult for bination is a personal privilege which cannot be communicated to another unless express permission to do so is granted in the rescript. On the other hand, the faculty given by the Ordinary of the place for cases of necessity is considered to be local, intended to meet the needs of the faithful in a particular

place. Anyone, then, who in case of need legitimately replaces the one enjoying the faculty may make use of it.

The wording of the Apostolic indult will determine the extent of its application. The conditions under which the Ordinary of the place may grant permission for bination are set down clearly in the law. Formerly, a number of eminent theologians considered that the faculty to binate in a case of necessity was granted by common law, and that the bishop had merely to determine authoritatively when the necessity existed. This view seems to be ruled out by the Canon. The Ordinary has power to allow bination and he, not the law, gives permission for it. However, there is no reason why this permission could not be presumed in a case of particular urgency when the conditions required are realized. It is explicitly stated that the Ordinary of the place cannot allow bination except in a case of necessity. Such a case is considered to exist when three conditions concur.

A. There must be a scarcity of priests. This shortage exists in every American diocese. In general then the faculty can and will be given. In a particular locality a sufficient number of priests, with the care of souls, might be found to meet the needs of the people with regard to Sunday Mass. Then bination would not be allowed. This condition, we believe, is very rare. It might be asked here if a pastor is bound to accept the services of a visiting priest who offers to relieve him of the necessity of bination. He would seem to be, unless he knows that his visitor is putting himself to serious inconvenience to help him or he himself has a good reason for refusing the proffered assistance. On the other hand, the pastor though not strictly obliged to invite his guest to take one of the Masses, would usually do so.

B. The faculty is given only for Sundays and Holydays of

obligation. It does not hold for suppressed feasts even though they are kept with great outward solemnity. A writer in the *"Nouvelle Revue Théologique,"* February, 1921, p. 104, thinks that a pastor in charge of two churches might binate on Holy Thursday. Gennari even held that he should. This view seems untenable. There is one case, very rare in practice, where bination on any day is allowed by all. A celebrant, who has already consumed the Sacred Host, who has no consecrated Particles and cannot easily secure any, is called upon to administer Holy Viaticum. He may say another Mass, for the divine law of Viaticum overrules the ecclesiastical prohibition against bination. Marc, *Institutiones*, n. 1626, in a note quotes with approval the *Ami du Clergé* likening to this case of very grave necessity the following: If unexpectedly a large number of the faithful (especially at Easter time) would wish to receive Holy Communion, and there were very few Particles in the Ciborium, no priest available for a second Mass, and the people could not without really serious inconvenience put off their Communion until another day. This, as will be seen, is not a very practical case. It considers not the obligation of hearing Mass, for which the law provides, but the necessity or utility of receiving Holy Communion. While it might hold for Easter duty it could hardly be stretched to include a Communion of Devotion. Perhaps some such circumstances were in the mind of the writers quoted above.

C. The faculty to binate is granted by the bishop to enable the faithful to comply with the precept of hearing Mass. He is not empowered to grant that permission in order to help a priest in need, to favor a person with the privilege of a private oratory, to allow a pastor to say on the same day the scheduled Mass and a late funeral service or for another reason. Bination is permitted only to prevent a notable part of the faithful from missing Mass.

What number constitutes a notable part? In 1688, the Sacred Inquisition stated that 15 to 20 persons did not. Some months later, the Congregation for the Propagation of the Faith declared that, under certain circumstances, 10 or 12 servants did. It follows that not mere numbers, but the conditions and needs of the people are to be taken into account. Dr. O'Donnell thinks that a score or so would be enough. Capello agrees with him. This would be normally. We can easily imagine an extraordinary case where a lesser number of the faithful present in church would be sufficient justification for bination.

The closing words of the Canon show how improbable was the opinion expressed by the Editor of the *Acta Sanctae Sedis*, Vol. VI, p. 568, who claimed that if three or even four Masses were required to enable all the people to fulfil the precept, a pastor would be entitled to say them. Nothing short of an Apostolic indult would empower a pastor to say three Masses on an ordinary Sunday. Such an indult was given to Mexico in 1879 and since renewed.

2. Cletus was justified under the circumstances in saying Mass for less than a dozen of his people. The hour for divine service had been announced, some of the faithful had made an extraordinary sacrifice to be present. Why disappoint them? If the priest did not say Mass, others, on less stormy Sundays, perhaps, would excuse themselves from going to church on the plea that it was not at all certain whether the priest would offer up the Holy Sacrifice. The cutting away of all flimsy excuses and the reward of the faithful few would certainly be reason sufficient for Cletus.

Cletus was not bound to offer his services to the pastor he was visiting. He had no obligation in justice to provide Mass for his friend's congregation. Nor was he required to put himself out to prevent his friend from binating. The Church is not so strongly

opposed to bination by one who has the faculty that another would have to interfere with its use. Charity might have claims on Cletus. Under the circumstances, however, he could not be expected to take upon himself the extra burden. The purpose of his vacation is rest. He was justified then in both actions. However, if he were going to say Mass anyhow, it would be reasonable and fitting for him to take one of the scheduled Masses, if he could easily do so.

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